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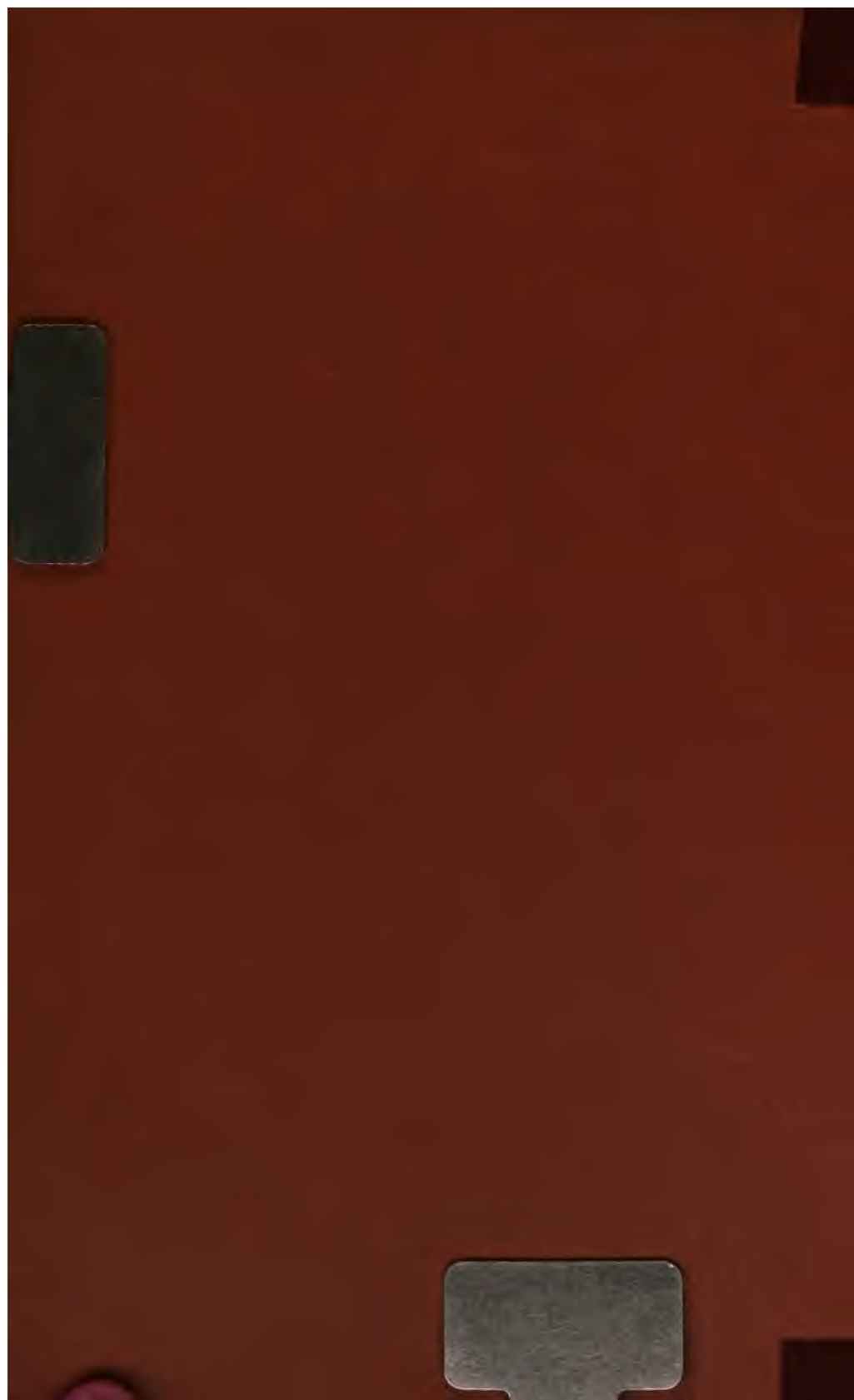
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St. Louis

Insurance Laws of *the* State of Indiana

**A Compilation of all Laws in Force
Relating to Insurance and Foreign
Corporations Generally, with
Annotations. Prepared by
GUILFORD A. DEITCH
Indianapolis Bar**



PB

SEPTEMBER, 1905

Indiana

SIB

INSURANCE LAWS

OF THE

STATE OF INDIANA.

**A COMPILATION OF ALL LAWS IN FORCE RELATING
TO INSURANCE AND FOREIGN CORPORATIONS
GENERALLY, WITH ANNOTATIONS.**

**PREPARED BY
GUILFORD A. DEITCH.
(INDIANAPOLIS BAR.)**

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INDIANA INSURANCE LAWS.

DOMESTIC COMPANIES.

CHAPTER I.

STOCK COMPANIES.

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1. Subscriptions to Stock, How Raised.

When any number of persons not less than nine shall associate themselves together for the purpose of organizing an insurance company, they shall designate three persons to act as commis-

sioners, to superintendent and receive subscriptions to the capital stock of such company, and such commissioners shall first give twenty-one days' notice in one or more newspapers published in the counties where the subscription books are proposed to be opened, stating therein the time and place or places of receiving such subscriptions. R. S. 1901, §4839.

2. Amount of Stock—Shares.

The capital stock of any insurance company organized under this act shall not be less than one hundred thousand (\$100,000) dollars, in shares not exceeding fifty (50) dollars each. But such capital stock may be increased by a vote of two-thirds of the directors: Provided, That any such company may be organized under the provisions of this act with a capital stock of not less than fifty thousand (50,000) dollars, but shall be limited to insuring any person against bodily infirmity, disablement and death resulting from casualty or accident, and providing benefits for disability caused by disease, until the capital stock is increased to one hundred thousand (100,000) dollars, when such company may also do insurance generally as provided in this act. R. S. 1901, §4840.

3. Subscription.

The commissioners shall attend at the time and place or places specified in such notice, and open books for subscription of stock; and any person, company or corporation may subscribe the same, and shall pay at the time of such subscription two dollars on each share. The books may be closed when the whole of the capital stock is subscribed, but not otherwise; and when a board of directors is elected, as hereinafter provided, said commissioners shall deliver to such board the books and money paid in upon subscriptions as aforesaid. R. S. 1901, §4841.

Construed in *Van Riper v. American Central Ins. Co.*, 60 Ind. 123.

Persons who subscribe for stock conditionally do not become stockholders until the performance of the conditions. *Railroad Co. v. Shearer*, 10 Ind. 244.

4. Directors.

The business of every such company shall be managed and conducted by not less than seven, nor more than thirteen directors, who shall also be stockholders, one of whom shall be president of the company; and they shall hold their offices for one year, and until others are chosen and qualified in their stead. R. S. 1901, §4842.

The directors of a corporation are trustees for the stockholders in the management of the business of the corporation, but not in their individual dealings with a stockholder as to his interest in the corporate property. *Board, etc., v. Reynolds*, 44 Ind. 509.

5. Secretary.

Such companies shall elect annually, or oftener, a secretary, who shall be the clerk of the company, and shall be sworn to the faithful discharge of his duty; and he shall, in addition to his other official duties, keep a true record of all the votes of the stockholders and of the directors, and a true list of the stockholders and the number of shares held by each one, and shall make proper entries of every transfer of shares, in a book to be by him kept for that purpose. R. S. 1901, §4843.

6. Directors, How Chosen.

The directors shall be chosen by the stockholders once in each year, at such time and place and in such manner as shall be provided in the by-laws of the company; all elections shall be by ballot; absent stockholders may vote by proxy, authorized in writing; twenty days' notice shall be given of all elections and of annual or special meetings. R. S. 1901, §4844.

It is not necessary that a stockholder should have a certificate of stock owned by him to entitle him to vote at an election of directors. *Beckett v. Houston*, 32 Ind. 393; *Butler v. Schoonover*, 114 Ind. 381.

7. President and Vice-President.

The directors shall choose from their number one person to be president and one to be vice-president, who shall be sworn to perform faithfully the duties of their respective offices, and every vacancy in the office of president or vice-president and directors that may occur shall be filled by a new election as hereinbefore prescribed. R. S. 1901, §4845.

8. Special Meetings.

Special meetings shall be called by the secretary or clerk of the company, upon the written application of the owners of one-fifth of the capital stock, to be held at such time and place as he shall direct, for the purposes set forth in such application. R. S. 1901, §4846.

9. Quorum.

A majority of the directors shall constitute a quorum to do business; and all questions, unless otherwise provided, shall be decided by a majority vote of those present. R. S. 1901, §4847.

10. Corporate Powers.

All persons who are stockholders in any such insurance company are hereby constituted and declared a body politic and corporate, by such name and style as the company may adopt, to continue thirty years from and after the organization of the same. R. S. 1901, §4848.

11. Section Repealed.

That an act entitled an act for the incorporation of insurance companies, defining their powers and describing their duties, approved June 17, 1852, be and the same is hereby amended by striking out section 11 of said act, and inserting in lieu thereof, the following to read:

12. May Acquire Real Estate.

Such company may acquire and hold real estate necessary for the transaction of its business, and may take and hold real state or securities, mortgaged or pledged for the payment of any debt due or becoming due; and also purchase real estate on sales made by virtue of any judgment or decree of any court in any cause to which said company is a party; and may take and receive real estate in payment or in part satisfaction of any debt previously contracted or due; but all real estate other than that retained for the transaction for its business shall be sold within five years from date of purchase. R. S. 1901, §4849.

13. Assets, How Invested.

The assets of such company shall be invested as follows:

First. In bonds of some one or more of the states of this union, or of the United States, or bonds of a city or county authorized to be issued by the legislature of the state where located; all of such bonds to be of a market value not below par.

Second. In bonds and mortgages upon unincumbered real estate, the market value of which real estate is at least double the amount loaned thereon, and the interest thereon not in default more than six months; and the value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located, and may hold real estate as provided in the next succeeding section of this act.

Third. In loans upon the pledge of such stock, bonds or mortgages, of par value, if the current market value of such stock, bonds or mortgages is at least twenty-five per cent. more than the amount loaned thereon. R. S. 1901, §4857a.

Mortgage not void if mortgaged property not worth double amount loaned. *Washington, etc., Co. v. Clason*, 45 N. Y. Supp. 27.

Solvent stocks include bonds or mortgages upon unincumbered real estate. *Opinion Atty.-Gen. Ketcham*, 1897.

Securities are not required to be within the state. *Opinion Atty.-Gen. Ketcham*, 1897.

Improvement lien under Barrett law is encumbrance within meaning of this section. *Opinion Atty.-Gen. Taylor*, 1900.

14. Stock, When to Be Paid in.

The capital stock of such company shall be paid in within eighteen months from the time of its subscription, in such sums as the directors may require; and such stock shall be transferable and assignable on the books of the company in such manner as the by-laws may prescribe. R. S. 1901, §4850.

15. Auditor's Statement.

Whenever the president and directors, or a majority of them, shall certify under oath, before an officer entitled to administer the same, that one-half of the capital stock is actually paid in, and a moiety of said half has been invested in solvent stocks and shall produce the subscription books, verified by the oath of the commissioners superintending such subscriptions, the auditor of state, if upon inspection of such books, certificate and stock securities, and all other matters connected therewith, shall be satisfied that the requirements of this act have been complied with, upon the deposit of the stock securities aforesaid in his office, shall give a certified statement, directed to the secretary of state, setting forth the name of the company, the amount of its capital stock, the amount and description of its stock securities, and the principal place of business of such company. R. S. 1901, §4851.

16. Certificate of Incorporation.

Such statement shall be filed in the office of the secretary of state, and that officer shall give to such company, or authorized agent thereof, a certificate of incorporation, under his seal of office, declaring the corporate name of such company, the amount of their capital stock and of securities deposited, and shall authorize such company, from and after the date thereof, to issue policies of insurance, according to the true intent and meaning of this act; and such certificate shall be conclusive evidence of the validity of its organization. R. S. 1901, §4852.

17. Fees of Auditor and Secretary.

The auditor shall be entitled to five dollars for the examina-

tion and statement, and the secretary to two dollars for the certificate of incorporation, which shall be paid by the company. R. S. 1901, §4853.

These fees are now required to be paid into the state treasury. Burns' Supp. 1897, §6422.

18. Auditor of State to Have Custody of Stocks.

The stocks thus deposited shall remain in the office of the auditor of state, who is hereby charged with the custody of the same, and shall, upon the application of the company entitled thereto, give powers of attorney to receive the interest or dividends of such securities when due or made, except as hereinafter provided. The company holding the same may withdraw a portion of such stocks upon substituting other securities, of like class or nature, with the consent of the auditor. R. S. 1901, §4854.

See annotation under §106 herein.

19. How Proceeds of Sales of Securities Shall Be Applied.

Such securities shall constitute a guarantee fund, which shall be for the benefit of the insured in such company, and the proceeds of the sale thereof shall be applied as herein named, and in the following order, and for no other purpose whatever:

First. To the payment of losses incurred by the assured, under any policy made by such company.

Second. The payment of laborers, artificers and other persons in the employ of such company.

Third. The payment of the trusts held and reduced to possession by such company.

Fourth. The payment of all other debts and liabilities owing from such company; but the proceeds of such securities shall in all cases be applied ratably to the class first in order, and the remainder, if any, to the other classes in their succession, as herein defined, and not otherwise. R. S. 1901, §4855.

For distribution on insolvency of company, see Joyce on Insurance, §1288; B. & A. R. Co. v. Mercantile, etc., Co., 82 Md. 535; Farmers', etc., Co. v. Aberle, 46 N. Y. Supp. 10.

As to right of auditor to surrender securities to company, see Hayne v. Metropolitan, etc., Co. (Minn.), 69 N. W. Rep. 916.

20. Five Per Cent. Retained on Dividends for Purchase of Securities—Deposit.

Such company shall, before any dividends declared upon the capital stock thereof are paid over to the holders of the same,

retain five per cent. on all such dividends, and within six months thereafter shall cause the sum thus retained to be invested in solvent stocks, as heretofore provided, and deposit them with the auditor of state. Such stock shall be added to and constitute a part of the guarantee fund, but shall not be considered any portion of the capital stock of such company. R. S. 1901, §4856.

21. Proceedings When Stocks Depreciate.

Whenever any of the stocks thus deposited have, in the estimation of the auditor of state, fallen below the value at which they were received, such officer shall give notice to the company making such deposit of such depreciation, and require the said company, within sixty days from the date thereof, to deposit other stock securities to an amount equal to such depreciation or deficiency. R. S. 1901, §4857.

22. What May Be Insured.

Every such company may take [make] insurance upon vessels, freight, money, goods and effects, on the life or health of any person, or on money lent upon bottomry or *respondentia*; and they may also make insurance against loss by fire, lightning, explosion or tornado, to any dwelling-house, or any other building, or the rent therefor, merchandise or other property within the United States or territories or the British possessions in North America. R. S. 1901, §4858.

23. Policies, How Signed.—Adjustment of Losses.

All policies of insurance made by such company shall be subscribed by the president, or if he be dead, or unable from any cause, then by the vice-president, and countersigned by the secretary thereof. All losses arising under any policies so executed shall be adjusted and settled by the president and board of directors. R. S. 1894, §4859.

When policies are required to be signed by designated officers, a suit will not lie on the policy unless it is so signed. *Peoria, etc., Co. v. Walser*, 22 Ind. 73.

Parol contracts of insurance may be made unless the charter of the company prohibits the same. *New England, etc., Co. v. Robinson*, 25 Ind. 536; *Commercial Union, etc., Co. v. State, etc.*, 113 Ind. 331.

The insured may enforce contract to insure whether the policy was issued or not. *New England, etc., Co. v. Robinson*, 25 Ind. 536; *American etc., Co. v. Patterson*, 28 Ind. 17.

Charter provision relative to making contracts can not be waived by officers or agents. *Leonard v. American, etc., Co.*, 97 Ind. 299.

Provisions of policy may be modified by action of the parties. *Phoenix, etc., Co. v. Hinesley*, 75 Ind. 1; *Wilcutts v. Northwestern, etc., Co.*, 81 Ind. 300.

24. Repealing Section 22.

That section twenty-two (22) of an act of the general assembly of the State of Indiana entitled an act to provide for the incorporation of insurance companies, defining their powers and prescribing their duties, approved June 17th, 1852, the same being section 3729 of the Revised Statutes of 1881, be, and the same is, hereby repealed. *Burns' Supp.* 1897, §4860.

25. Payment of Losses When Cash Has Failed—Increase of Stock, How Invested.

Whenever the cash means of such company are insufficient to pay the losses incurred on any policy of insurance the secretary thereof shall immediately notify the auditor of state of such fact, and such auditor shall, within thirty days after such notice, if practicable, sell, at either public or private sale, so much of said stock as shall be required to pay the losses as aforesaid. Such company shall not declare any dividends thereafter until the deficiency created by such sale has been made good by the net earnings of the corporation, and the same is converted into stocks and deposited with the auditor as hereinbefore provided; but such auditor or any stockholder of such company shall not, directly or indirectly, be the purchaser of any of the stocks sold in conformity to the provisions of this act. Whenever, by a vote of the directors, as specified in section second, the capital stock of such company is increased, one-half of such increase shall be invested in stock as aforesaid and deposited with the auditor of state, within twelve months from the date of the order or resolution of such board of directors, and such deposit shall be accompanied with a statement under oath, signed by a majority of such directors, that the increased capital is paid into the treasury of such company, or secured to be paid in, and it shall be the duty of the auditor in like manner as upon the original deposit and statement of such company, to certify the same to the secretary of state, whose certificate shall be evidence of the increase of such capital stock. *R. S.* 1901, §4861.

26. Companies Not to Trade in Merchandise, Etc.

Such companies shall not, directly or indirectly, deal or trade in buying or selling goods, wares, merchandise (stocks) or other commodities whatever, except as herein provided. *R. S.* 1901, §4862.

27. Registry of Stocks.

The auditor of state shall keep a registry of stocks, in which he shall note the date, description, to whom, and by what company issued, the amount thereof and value of the same. He shall receive for his services one dollar for every power of attorney, and the half of one per cent. on all the stocks sold by him, and ten cents per hundred words for all copies of records, and all records made in performance of the duties herein enjoined, which fees shall be paid him by the proper company. R. S. 1901, §4863.

These fees must now be paid into state treasury. Burns' Supp., 1897, §6422.

28. Annual Statements—Publication.

The board of directors of every such company shall, during the month of January in each year, file with the auditor of state a statement, verified by oath and signed by a majority of them, which shall be attested by the secretary, setting forth the amount of the capital stock and how the same is invested; the number of the policies issued during the last preceding calendar year and the amount insured thereby; the number of policies outstanding on the 31st day of December of the preceding year, and the amount insured thereby; the nature and kind of risks taken, the losses sustained and the condition of the guaranty fund; and shall publish the same in some newspaper of general circulation printed and published in the county in which the principal office of business of said company is situated. R. S. 1901, §4864.

29. Failure to Report or Deposit Additional Securities—Auditor to Notify Prosecutor.

If such company fail to report, as provided in the preceding section, or shall fail to deposit additional stock securities as hereinbefore provided, when notified so to do by the auditor of state, or to deposit stocks created by the five per cent. assessment upon dividends as required by section 18 (20 herein), or if such company shall fail to pay losses to the assured upon any policy of insurance issued by them, within sixty days' notice of the same, unless the payment is contested or the auditor is properly notified of the insufficiency of cash means to pay such losses as hereinbefore provided; or if the guarantee fund is exhausted or inadequate to meet losses, the auditor of state shall, in either case of neglect or failure or cause specified, notify the prosecuting attorney of the circuit court in the county in which the principal office of such company is situate of the facts in relation thereto. R. S. 1901, §4865.

30. Duty of Prosecutor.

Such prosecuting attorney shall file an information in the name of the state of Indiana with the clerk of the circuit court of such county, requiring such company to show cause why their rights of incorporation herein derived shall not be forfeited; and notice of such proceeding shall be given by proper process upon the secretary of such company at least ten days prior to the term of such court, or in his absence upon the president thereof, or if the president be absent, then by publication of notice for three weeks successively before the commencement of such term in any newspaper printed in such county, or if none, then in a newspaper in this state nearest thereto. R. S. 1901, §4866.

Policy-holder can not maintain action for receiver. *Swan v. Mutual, etc., Assn. (N. Y.)*, 49 N. E. Rep. 258; *Fullenwider v. Supreme, etc., League (Ill. App.)*, 30 Chicago L. N. 187, 180 Ill. 621; *Lowery v. State Life Ins. Co.*, 153 Ind. 100. See *Muller v. State Life Ins. Co.*, 27 Ind. App. 45.

31. Hearing, Etc.—Receiver.

Upon the hearing of such cause, if the court shall give judgment against the company, such court shall appoint some disinterested person as receiver, who shall give bond with sureties in the penal sum as the court may direct, and thereupon shall immediately take possession of the assets, both real and personal, of such company. R. S. 1901, §4867.

Appointment of a receiver does not annul an action brought by a policy-holder. *Bedell v. North American, etc., Co.*, 7 Daly 273; *Writner v. Universal, etc., Co.*, 4 Abb. (N. C.) 23.

Appointment of receiver can not be questioned collaterally in another tribunal. *Atty.-Gen. v. Guardian, etc., Co.*, 77 N. Y. 297; *People v. Atlantic, etc., Co.*, 74 N. Y. 177; *Bank v. U. S., etc., Co.*, 105 Ind. 227.

After appointment of receiver judicial action must follow the statute. *Atty.-Gen. v. Atlantic, etc., Co.*, 77 N. Y. 336.

Appointment of receiver terminates all existing agencies as far as claims for salaries are concerned. *People v. Globe, etc., Co.*, 91 N. Y. 174.

32. Auditor May Deliver Stocks to Receiver.

The auditor of state shall, upon the proper demand of the receiver, deliver to him the stocks of such company deposited in his office, but the order of such delivery shall be made by the court, and a copy of such order, certified by the clerk thereof, shall be first served upon such auditor by the receiver. R. S. 1901, §4868.

33. Conversion of Assets into Money.

The court shall make such order, from time to time, in the premises, not inconsistent with this act, for the conversion of

such assets into money, and the distribution thereof among the creditors of such company as shall best conduce to justice and right; but such distribution shall conform to the provisions of section 17 (19 herein), and the entire assets shall be paid to creditors in the order there directed. R. S. 1901, §4869.

34. Report and Compensation of Receiver.

The receiver shall make report at each and every term of the said circuit court of his doings in all matters relating to his trust, and shall, at the term next following his appointment, report specifically the kind and amount of all assets in his hands, and their probable value. In the final settlement of his account the court shall direct the payment to him of such sums out of the assets as shall be deemed an equitable compensation for his services. R. S. 1901, §4870.

For annotation under the title "Distribution of Assets of Insolvent Insurance Company," see *B. & A. R. Co. v. Mercantile, etc., Co.*, 38 L. R. A. 97.

35. No Company Shall Issue Bank Notes.

Nothing in this act shall confer on any insurance company the right to issue notes similar to bank notes for the purpose of a circulating medium. R. S. 1894, §4871.

36. Admission of Foreign Companies.

Be it further enacted, that an act entitled an act, as in Section one (1) hereof stated, be and the same is hereby further amended by striking out Section thirty-three (33) (35 herein) of said act, the same being Section 3740 of the Revised Statutes of Indiana of 1881, and inserting in lieu thereof the following, to be and read:

Section 33. Any life, health and accident, or any life or accident, or health insurance company of any other State having a capital or assets required of companies organized under the laws of this State, shall be entitled to do business in this State upon complying with the other provisions of the laws of this State governing foreign insurance companies doing business in this State: And it is further enacted, that no company organized under the provisions of this act, shall issue any note or bill as a circulating medium. R. S. 1901, §4871.

This section is unconstitutional. Opinion Atty-Gen. Taylor, 1901.

37. Individual Liability in Certain Cases.

If any company shall be under liability for losses, to an amount equal to three-fourths of their capital stock, and the president

and directors, with knowledge of the same, shall make new or further insurance, the estates of such assenting directors shall be jointly and severally liable for the amount of any loss which shall take place under such insurance, and whenever the means of such company are exhausted, the estates of stockholders shall, for all losses, be liable to an amount equal to their respective shares of capital stock. R. S. 1901, §4872.

38. Risks, Limits of.

No company shall take on any one risk, of whatever nature, a sum exceeding one-tenth part of their capital actually paid in. R. S. 1901, §4873.

39. Stockholders, When Liable for Stock Not Paid in.

In case of any loss whereby the capital stock of any company shall be lessened before all the installments are paid in, each stockholder's estate shall be held liable for the installments thus unpaid at the time of such loss; and no dividend shall thereafter be made until a sum arising from the profits out of the business of the company, or otherwise contributed, equal to such diminution, shall have been added to the capital. R. S. 1901, §4874.

40. Triennial Statements.

Once in every three years, and oftener if required by the stockholders, the directors shall lay before them at a meeting an exact and detailed statement of the profits, if any there be, particularizing the losses sustained and dividends made, and deducting them therefrom. R. S. 1901, §4875.

CHAPTER II.

MUTUAL FIRE COMPANIES.

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41. Powers.

All mutual fire insurance companies, and all officers by them elected, may exercise the powers, and shall be subject to the duties and liabilities contained in the foregoing sections of this act (1 to 40 herein), except as herein provided. R. S. 1901, §4876.

For mode of organization, see opinion Attorney-General Hord, 1886.

42. Election of Officers.

Every such corporation shall annually elect a secretary and not less than five directors, and the directors, in like manner, shall elect a president and vice-president, as heretofore provided in the case of other insurance companies, and shall also elect a treasurer, who shall give bond in such sum as such directors shall order. No one member shall be allowed more than five votes at any election, but absent members may vote by proxy, authorized in writing, and that the officers of the company may have time to examine the list of policy-holders and see who are members, and the number of votes each proxy is entitled to. Such proxy

shall set forth the number of policy, and the amount insured by the same, and such policy [proxy], or a duplicate of the same, shall be placed on file with the secretary of the company at least ten days previous to the day of any election. R. S. 1901, §4877.

43. Record of Votes, Policies, Etc.

There shall be kept a true record of all the votes of the corporation, and of the directors, and of all the policies issued by the company, and of all assignments of such policies assented to by them, which shall be open to the inspection of any person interested therein. R. S. 1901, §4878.

44. Terms of Officers.

All the officers of such corporation shall hold their offices one year, and until others are chosen and qualified, and vacancies may be filled by a special election. R. S. 1901, §4879.

45. Insurance Policies May Issue When—Term of Policy.

When application for insurance in which there shall be taken not less than a hundred thousand dollars in bona fide premium notes and \$20,000 in cash by any such company, and of which it shall be at the time possessed, and proof of the same is furnished to the auditor of state, the books containing the same verified by the secretary of the company, and examined and approved by him, as evidenced by his certificate, such company may issue policies of insurance, and renewals on the same, for a term not exceeding seven years, against loss or damage by fire, lightning, or tornado, upon any dwelling-house or other buildings, merchandise or other property within the United States: Provided, however, That companies already organized and in active operation shall not be affected hereby. R. S. 1901, §4880.

Policies may be issued for less than seven years, *Embree v. Shideler*, 36 Ind. 423.

Notes of insolvent parties not bona fide. *Opinion Attorney-General Hord*, 1886.

46. Policies, How Signed.

All policies of insurance made by such corporation shall be subscribed by the president, and countersigned by the secretary, and shall be binding upon the corporation as if executed under their corporate seal. R. S. 1901, §4881.

For construction, see under §23.

47. Membership.

Every person insured by any such company shall be a member thereof as long as he shall be so insured. R. S. 1901, §4882.

Persons giving premium notes become members, *Reliance Co. v. Brown*, 4 Ind. App. 92.

Surrender of policy and payment of a portion of an assessment with an understanding that no further assessments should be made, is not a withdrawal from the company, nor an annulment of the policy. *Seamen's v. Millers', etc.*, Co. 90 Wis. 490.

Of relation of members to company and to each other, see *Joyce on Insurance*, §§316-319. See annotation to *Ionia, etc., Co., v. Ionia Circuit Judge*, 32 L. R. A. 481.

Conditions precedent to termination of membership. *Schroeder v. Farmers', etc., Co.*, 87 Mich. 310. The law does not require members to be residents of state. *Opinion Attorney-General Hord*, 1886.

48. Member to Give Premium Note—Insured May Pay Definite Consideration.

Every person who shall become a member of such company shall, before receiving a policy, deposit his, her, or their promissory note, as a premium note, and shall pay such further consideration, on or before receiving the policy, as may be agreed upon, and such note shall be payable, in whole or in part, when, on any assessment, the directors may require the same. But should any person insuring in such company so desire, they can pay a definite consideration in lieu of giving a premium note, and in this case the person so insured shall not be deemed a member nor entitled to participate in the accumulations of the company, and such company may, if it so desire, take a promissory note for the cash premium, for such length of time, on any policy, as may be agreed upon; and if such promissory note shall remain unpaid, after it becomes due, the company shall not be held responsible for any loss or damage that may take place under any policy for which such note was given. R. S. 1901, §4883.

The premium notes constitute the capital of the company to which insured may look for payment of losses. *Opinion Attorney-General Hord*, 1886.

Right of directors to surrender notes to makers. *Opinion Attorney-General Hord*, 1886.

Note given insolvent company not collectible. *Opinion Attorney-General Hord*, 1886.

49. Funds, How Invested and Appropriated.

The funds of every such corporation shall be invested in stocks, or loaned on security, as the directors may order, and shall be

appropriated, first, to pay the expenses of the corporation; and then to pay the damage which any member may be entitled to recover in his policy; and if any member shall have a just claim on the corporation, founded on a policy issued by them, exceeding the amount of their then existing funds, exclusive of deposit notes, given by the members, the directors shall forthwith assess such sum as may be necessary to pay the same, upon the members, in proportion to the amount of their premiums and deposits severally for seven years; but no member shall be liable to pay in the whole more than the amount of his premium and deposit note. R. S. 1901, §4884.

Policy-holders who pay cash for their policies are entitled to have assessments made on premium notes for payment of their losses. *Clarke v. Manufacturers', etc., Co.*, 130 Ind. 332.

Estoppel of insured to deny membership. *Richards, Receiver, v. Swain et al.*, 7 Ohio N. P. 68.

For liability of members on premium notes, see *McCulloch v. Indiana, etc., Co.*, 8 Blackf. 50; *German, etc., Co. v. Franck*, 23 Ind. 364; *Sinnissippi, etc., Co. v. Taft*, 26 Ind. 240; *Downs v. Hammond*, 47 Ind. 131; *Clarke v. Manufacturers', etc., Co.*, 130 Ind. 332; *Embree v. Shideler*, 36 Ind. 423; *Manlove v. Burger*, 36 Ind. 211; *Bersch v. Sinnissippi, etc., Co.*, 26 Ind. 64; *Boland v. Whitman*, 33 Ind. 64; *Whitman v. Meisner*, 34 Ind. 487; *Howard v. Whitman*, 29 Ind. 557; *Indiana, etc., Co. v. Coquillard*, 2 Ind. 645. Assessments can not be levied to create fund for payment of future losses, *Farmers', etc., Co. v. Knight*, 162 Ill. 470. See *Vandalia, etc., Co. v. Peasley*, 84 Ill. App. 138.

Assessments levied by court appointing receiver is binding on members to same extent as if levied by directors. *Parker v. Central, etc., Co.*, 4 Ohio L. D. 50. See *Cavanaugh v. Cannon*, 82 N. W. 523.

Solvent members can not be assessed to cover deficiency resulting from non-payment by insolvent members. *Pratt v. Dwelling House, etc., Co.*, 40 N. Y. Supp. 179.

For annotation on "Liability of members of mutual fire insurance companies," see *Ionia, etc., Co. v. Ionia Circuit Judge*, 32 L. R. A. 481.

Member not liable to assessments after sale of insured property. *Indiana, etc., Co. v. Connor*, 5 Ind. 170.

50. Statement Necessary Before Assessment on Note.

Before the company shall make any assessment on the premium notes for alleged losses, the president and a majority of the directors shall make a statement, verified by their oath, exhibiting the amount and nature of the loss sustained; of cash means and premium notes on hand, and the gross amount of the assessment proposed to be levied. R. S. 1901, §4885.

An assessment, in the absence of such statement is invalid. *Greenwald v. United, etc., Assn.*, 18 Misc. 91, 42 N. Y. Supp. 973; *Johnson v. Farmers', etc., Co.*, (Mich.) 68 N. W. Rep. 299.

51. Directors, When Personally Liable.

Whenever sufficient goods or estate of any such corporation can not be found to satisfy an execution issued against them upon a judgment recovered on a policy by them made, and the said corporation have goods or estate to satisfy such execution, and the directors shall neglect or refuse to pay the same, or if the directors shall for thirty days after the rendition of such judgment, refuse or neglect to make such an assessment as they may be authorized to make therefor, and to deliver the same to the treasurer for collection, or fail to apply such assessment, when collected, towards satisfying such execution, then, in either of the cases aforesaid, the directors shall be personally liable for the whole amount of said execution. R. S. 1901, §4886.

Directors are personally liable only where a judgment has been recovered against the company; accepting a note for loss, and either releasing the policy, or getting a judgment on the note, releases the liability of directors. *Raber v. Jones*, 40 Ind. 436.

52. Recovery Against Directors.

Whenever the directors or treasurer shall be liable by the provisions of the two previous sections, the judgment creditor or claimant may recover the same in an action at law, in courts having jurisdiction; and any director who shall voluntarily, or by compulsion, pay such judgment or claim, shall have an action at law for a contribution against any other director for his due proportion thereof. R. S. 1901, §4887.

53. Treasurer, When Liable.

Whenever the treasurer of such corporation shall neglect or refuse to collect any assessments in his hands for that purpose, and to apply the proceeds of the same to discharge the claim for which such assessment was made, he shall, in his [private] capacity, be liable to the complainant for the aggregate amount of such assessment. R. S. 1901, §4888.

54. Policy Creates Lien on Real Estate for Payment of Note.

Every policy made by such corporation shall of itself create a lien on the interest of the person insured, in the building so insured, and in the land upon which the same is situate, for securing the payment of his deposit note, any sums which he may be assessed on account of such policy: Provided, The extent of such liability, and the intention of the corporation to rely upon such lien, is expressed in the policy; or, upon the alienation of the estate to a bona fide purchaser, the lien shall cease as to all losses

which shall thereafter happen, unless the policy is continued in force by consent of the purchaser. R. S. 1901, §4889.

McCulloch v. Indiana, etc., Co., 8 Blackf. 50.

Effect of statutory lien. Farmers', etc., Assn. v. Burch, 24 S. E. Rep. 503.

55. Enforcement of Lien.

If it shall become necessary to resort to such lien for the payment of any sum secured thereby, the treasurer of the corporation shall demand [payment] thereof from the assured, or his legal representatives, and also from any tenant in possession of the insured premises, setting forth, in writing the sum due; and if the same is not paid the corporation may institute an action at law and levy any execution issued on such action upon the state subject to the lien. R. S. 1901, §4890.

56. Officer May Sell—Owner May Redeem.

The officer making the levy may sell first the rents and profits for not more than five years, the whole or any part thereof, at such execution sale, and shall pay over the balance, if any, after satisfying the judgment and costs of execution to the defendant in such action; but the owner shall have the right to redeem the same, within one year thereafter, by tendering to the treasurer of the company the amount of judgment and costs, and interest accruing thereon. R. S. 1901, §4891.

57. Cash Accumulations, when to Be Added to Capital.

The cash accumulations of such company, over and above the losses and expenses, shall be added to its capital, and held by the company for the protection of its policy-holders, until such cash accumulations shall reach the sum of one hundred thousand dollars; and after this sum shall have been accumulated the board of directors may, for any additional cash accumulations thereafter, declare a dividend once in five years, pro rata, in proportion to the amount paid by the then existing policy-holders and pay the same to them on the renewals, for five or seven years, of their policies then in force in said company: Provided, That no dividend need be declared, or paid in renewals or otherwise, until the cash accumulations shall have reached a sum in excess of six per cent. of the amount of insurance in force against any such company, and such accumulations, to the amount of six per cent. of the insurance in force, shall be added to the capital of said company, and held by it for the protection of its policy-holders. R. S. 1901, §4892.

58. Annual Report to Auditor of State.

The directors of such company, or a majority of them, shall, in January of each year, make a report verified by their oath, and attested by the secretary of such company, stating in full the amount of their capital stock, of premium notes, and the assessments made thereon; of cash means on hand other than premium notes; of the amount insured, and losses on the same; and generally of the indebtedness and resources of the company, and file the same with the auditor of state, and publish a copy of the same in a newspaper printed in this state nearest their principal office of business. If such company shall fail to make such report, the same proceedings shall be had as in case of other insurance companies. R. S. 1901, §4893.

59. Section Unconstitutional.

Section 56 of the act of the incorporation of insurance companies, etc., approved June 17, 1852, purporting to regulate the agencies of foreign insurance companies doing business in this state, was decided to be unconstitutional, the section not being embraced by the title of the act.

Igoe v. State, 14 Ind. 239; *Grubb v. State*, 24 Ind. 295.

60. Repealing Section.

That all special acts of incorporation for insurance companies heretofore enacted, and under which no such company has been organized, nor measures taken to affect an organization under the same, be and they are hereby repealed. Acts 1852, p. —

Repealed by being omitted from Revised Statutes 1881. *Globe*, etc., Co. v. Reid, 49 N. E. Rep. 291.

61. When Assessment Companies May Issue Stock.

That any insurance company organized and doing business under the laws of this state on what is known as the assessment plan, and having more than one thousand members, and a reserve fund of not less than one hundred thousand dollars, is hereby authorized, subject to the limitation hereinafter contained, to issue stock in shares of fifty dollars (\$50) each, to an amount of not less than one hundred thousand dollars nor more than five hundred thousand dollars, and to receive subscriptions therefor. R. S. 1901, §4894a.

See *Grobe v. Erie County Mutual, etc., Co.*, 57 N. Y. Supp. 290.

62. Notice of Proposal to Issue Stock—When Subscription Books May Be Opened.

Before issuing any stock as aforesaid, such company shall, at least four weeks before the meeting hereinafter provided for, cause a printed notice of the time, place and purpose of such meeting to be mailed to each of its members, and shall cause public notice to be given by publication thereof, at least once a week, for four weeks, in a newspaper of general circulation in the county wherein is located the principal office of said company; that the proposal to issue stock in pursuance of this act will be submitted to the members of such company at a meeting to be held at a time and place to be named in such notice. If, after due mailing and publication of such notice, two-thirds of all the members (present at such meeting), either in person or by proxy shall vote in favor of a proposal to issue stock as aforesaid, then the authority conferred by section 1 (61 herein) of this act shall take effect, and subscription books may be opened. R. S. 1901, §4894b.

This act is constitutional. *Grobe v. Erie County, etc., Co.*, 24 Misc. 462; 53 N. Y. Supp. 628.

63. Subscriptions for Stock by Members—When Others May Subscribe.

Every person who is a member of such company on the day of such meeting shall, for thirty days after the opening of the subscription books as aforesaid, be entitled to subscribe to that proportionate number of shares of the capital stock, agreed upon to be issued, which the premium note or notes owing by such member and held by such company on unexpired policies, in force on the day of such meeting aforesaid, shall bear to the entire amount of such notes then held by such company, and upon the payment of such subscription said note or notes shall be canceled and delivered to such members. If at the end of thirty days from the opening of subscription books, the full amount of the capital stock designated has not been subscribed under the provisions of this section, then other subscriptions may be received, to be paid for as the directors of said company may require within eighteen months. R. S. 1901, §4894c.

See *Grobe v. Erie County Mutual, etc., Co.*, 57 N. Y. Supp. 290.

64. By-Laws—Directors.

When all the stock shall have been subscribed as aforesaid, the stockholders shall adopt by-laws for the government of such company not inconsistent with the laws of the state of Indiana, nam-

ing therein the number of directors, which shall not be less than seven nor more than thirteen, who shall manage the affairs of said company, and shall at once elect the new directors for the ensuing year, a majority of whom shall constitute a quorum for the transaction of business. R. S. 1901, §4894d.

65. Certificate of Incorporation—Deposits with Auditor of State.

And thereupon, when all of said stock shall have been subscribed a statement shall be filed with the secretary of state, and that officer shall give to such company a certificate of incorporation under his seal of office, declaring the corporate name of such company, the amount of capital stock, and the amount of securities deposited with the auditor of state, as herein provided, the names of the directors who are to conduct the business of the company for the first year, and henceforth upon the payment to such officer of the fee provided by law to be paid for the incorporation of joint stock companies; and said company shall then become a body corporate, with the power and authority to sue and be sued as such, in any proper court, and such company may carry on the business of insuring property against loss or damage by fire, in a manner not inconsistent with the laws of this state, as a stock company: Provided, however, That before such company shall issue any policies of insurance, such company shall deposit in the office of the auditor of state of Indiana, stock, bonds or notes to be approved by said auditor, to the amount of twenty-five per cent. of the capital stock of said company, the interest on which is to be paid to said company: Provided, That the securities so held may be replaced by other securities to be first approved by said auditor, when by reason of their maturity, or other good cause, it shall seem necessary or proper for the best interest of such company to replace them. R. S. 1901, §4894e.

Suit against company must be in county where principal office is located. *Globe, etc., Co. v. Reid*, 49 N. E. Rep. 291.

But see section 200 herein.

66. Officers—Bonds.

Said directors shall, upon the receipt by the company of said certificate of incorporation, immediately elect a president, vice-president, secretary and treasurer from their number, who shall be sworn to perform faithfully the duties of their respective offices, and who shall give bond for a sum and in a manner to be prescribed in the by-laws of such company. R. S. 1901, §4894f.

67. Insurance Assessment Plan Not Obligatory.

It shall not be obligatory upon any company, after the issuing of stock as aforesaid, to accept applications for insurance upon the mutual or assessment plan. R. S. 1901, §4894g.

68. Disposition of Assets.

No part of the assets now possessed by such company, or that shall be possessed at the time of the meeting at which it is determined to issue stock, or which may be acquired in the interim, shall be divided among the members of such company, or be expended, except for the ordinary disbursements of such company made in the usual course of its business, including losses incurred upon its policies, but such assets shall remain and constitute as heretofore a fund in the hands of such company for the security of the holders of its policies. R. S. 1901, §4894h.

* This section is constitutional. *Grobe v. Erie County, etc., Co.*, 57 N. Y. Supp. 290.

69. Annual Reports.

Such company shall, by its board of directors, make a report, upon the 1st day of January of each year, of the condition of stock, showing the amount of capital stock, the number and amount of policies issued, the nature and kind of risks taken, the losses sustained, and the assets of every nature on hand or belonging to the company, which report shall be signed and sworn to by a majority of the directors of such company and published in a newspaper of general circulation in the county in which the company shall have its principal office. R. S. 1901, §4894i.

CHAPTER III.

CLASS FIRE INSURANCE COMPANIES.

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| <p>§70. Who may incorporate—Cash and notes for premium—Premium notes, when payable—List of members submitted to auditor.</p> | <p>§71. Name of trade to be indicated in title — Penalty — Compliance with laws.</p> <p>72. Farmers' mutual companies, how formed—Management —Business limited to three counties.</p> |
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70. Who May Incorporate—Cash and Notes for Premiums—Premium Notes, When Payable—List of Members Submitted to Auditor.

That any number of persons, not less than nine, who shall be engaged in the same class of manufacture, trade or business, may associate themselves together for the purpose of a mutual insurance of their respective classes of property against loss or damage by fire, lightning, tornado or explosion, but no such company shall commence business until agreements have been entered into for insurance with at least one hundred applicants, the premiums on which shall amount to not less than fifty thousand dollars, on which at least ten thousand dollars shall have been paid in, in cash, and notes of solvent parties founded on actual and bona fide applications for insurance for the remainder shall have been received. No one of the notes received as above shall for organization purposes be counted as more than five hundred dollars, and no two shall be given for the same risk or be made by the same person or firm, except where the whole amount by such notes shall not for organization purposes be counted as more than five hundred dollars; nor shall any such note be represented as capital unless a policy be received upon the same within thirty days after the organization of the corporation upon a risk which shall be for no shorter period than twelve months. Each of said notes shall be payable in parts or in whole at any time when the directors shall deem the same requisite for the payment of losses and such incidental expenses as may be necessary for the transaction of the business of the corporation. Before the auditor of state shall issue a certificate to such company to do business, there shall be exhibited to him a list of said persons making said agreements together with the affidavits of the president and secretary of said company or of the agent taking such applications,

that each of the persons making the same is, in their or his opinion, pecuniarily good and responsible for the same. R. S. 1901, §4894j.

Solvent members can not be assessed for deficiency owing to non-payment of assessments by insolvent members. *Pratt v. Dwelling House etc., Co.*, 7 App. Div. 544.

See annotations to sections 48, 195 herein.

Officers can not release a member from his contract and statutory liability with other members upon his payment of an insufficient assessment. *Seamans v. Millers', etc., Co.*, 90 Wis. 490.

71. Name of Trade to Be Indicated in Title—Penalty—Laws to Be Complied With.

Every company organized under the provisions of the preceding section shall indicate in its title or name the trade and class of property which it shall be organized to insure, and no such company shall insure any property of any other trade or class. Any and every officer of any such company who shall issue a policy to any person contrary to the provisions of this act, or who shall violate any of the provisions of this act, shall be subject to a fine of one hundred dollars for each and every policy so issued or each and every violation of the provisions of this act. Such company shall comply with all laws now in force governing mutual fire insurance companies, except as above provided. R. S. 1901, §4894k.

72. Farmers' Mutual Companies, How Formed—Management—Business Limited to Three Counties.

Any number of persons, not less than ten, may form an incorporated company for the purpose of mutual insurance of the property of its members against loss by fire or damage by lightning, which property to be insured shall embrace dwelling houses, barns, accompanying outbuildings and their contents, farm implements, hay, grain, wool, and other farm products, live stock, wagons, carriages, harness, household goods, wearing apparel, provisions, musical instruments and libraries, such property being upon farms as farm property. The articles for forming such associations shall be signed by the persons who at first form such association, and be recorded in the office of the recorder of the county or counties where such association does business. Such associations shall be managed by such officers as their articles may provide for, and in the election of such officers each member of the association shall be entitled to one vote. Every such association may sue or be sued by such name as shall be set forth

in the articles of association, and shall have all the other powers of corporate bodies: Provided, That no company organized under this act shall do any business, or take any risks, or make any insurance in more than three counties, which counties shall be contiguous, and shall be set forth in its articles of association. R. S. 1901, §4932.

A policy on property owned and ordinarily kept in one of the three counties covers a loss occurring while the property is temporarily in another county, in ordinary use by its owner. *Eddy v. Farmers', etc., Co.*, 41 N. Y. Supp. 854.

Policies issued on property outside of the territorial limits fixed by law are void. *Eddy v. Merchants', etc., Co.*, 72 Mich. 651.

Solvent members can not be assessed for deficiency owing to non-payment of assessment by insolvent members. *Pratt v. Dwelling-House, etc., Co.*, 7 App. Div. 544.

Officers can not release a member from his liability to other members upon payment of an insufficient assessment. *Seamans v. Millers', etc., Co.*, 90 Wis. 490.

See annotation to sections 48-195. Also opinion Attorney-General Taylor, 1899. See section 75 herein.

CHAPTER IV.

MISCELLANEOUS PROVISIONS RELATING TO FIRE INSURANCE COMPANIES.

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| §73. Annual statements by special charter companies—Form of—Publication of—Cost—Certified copy furnished company. | §80. Charges of violation—Duty of auditor of state. |
| 74. Fees to auditor of state—Companies not affected by act. | 81. Penalty for failure to appear. |
| 75. Examination of company. | 82. Hearing — Judgment — Penalty. |
| 76. Actuaries of mutual fire companies may administer oaths. | 83. Unlawful to write insurance outside of state in authorized company. |
| 77. Co-insurance clause in policies prohibited—Exception. | 84. Authority revoked — When may be readmitted. |
| 78. When clause inserted in policy void. | 85. When auditor of state to inspect books—Penalty for refusal to exhibit books. |
| 79. Penalty. | 86. Compensation of auditor of state. |
| | 87. Arson defined—Penalty. |

73. Annual Statements by Special Charter Companies—Form of —Publication of—Cost—Certified Copy Furnished to Company.

That every company created by special act of the general assembly of the state of Indiana, for the purpose of transacting the

business of insurance, shall, on or before the third Monday of January of each year, furnish the said auditor with a statement verified by the oaths of the president and secretary of said company, and signed by a majority of the directors of such company, which statement shall show :

First. The name and locality of the company.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid in.

Fourth. The assets of the company, including: First, the amount of cash on hand and in the hands of agents or other persons. Second, the value of its real estate. Third, the bonds owned by the company and how they are secured, with the rate of interest thereon. Fourth, debts to the company secured by mortgage. Fifth, debts otherwise secured. Sixth, debts for premiums. Seventh, all other securities.

Fifth. The amount of liabilities due or not due to banks or other creditors of the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense waiting for further proof.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured in any one risk.

Twelfth. The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

Thirteenth. The greatest amount allowed to be insured in any one block.

The auditor of state shall cause a copy of such annual statement to be published in the two leading daily newspapers of the state having the largest general circulation therein, and also in some newspaper of general circulation, printed and published in the city or town in which the principal office of such company is located: Provided, That not more than one dollar per square shall be paid for each one of such publications, the expense thereof to be paid by the company: And provided further, That for the year 1898 such statement shall be made and published on or before the first day of April, 1899: And provided further, That it shall be the duty of the auditor of state to furnish such company with a certified copy of such statement or report whenever so requested to do by any officer of such company. R. S. 1901, §4875a.

74. Fees to Auditor of State—Companies Not Affected by Act.

The auditor of state shall charge and collect for the state of Indiana the sum of five dollars in each and every case for the examination of the charter and five dollars in each and every case for the examination of the statement and investigation of evidence of the investment of the assets of such company in accordance with the provisions of their respective charters, and two dollars for each such certified copy of such statement, and shall pay the same over to the treasurer of state to go into the general fund of the state: Provided, however, The provisions of this act shall not apply to farmers' mutual fire insurance associations, organized under special acts since the year 1852, and doing business strictly under the assessment plan. R. S. 1901, §4875b.

75. Examination of Company.

The auditor of state shall examine or cause to be examined by some competent and disinterested person every detail of the business of any special charter company transacting business of insurance in this state whenever, in his judgment, such examination is required for the interest of the policy-holders of such company; and, for the purpose of such examination, has power, either in person or by one or more competent and disinterested examiners by him commissioned in writing. R. S. 1901, §4875c.

76. Actuaries of Mutual Fire Companies May Administer Oaths.

Actuaries of mutual fire insurance companies or associations organized by virtue of the laws of this state for the purpose of mutual insurance of the property of its members against loss by fire or damage by lightning, which property to be insured shall embrace dwelling houses, barns, accompanying outbuildings and their contents, farm implements, hay, grain, wool and other farm products, live stock, wagons, carriages, harness, household goods, wearing apparel, provisions, musical instruments and libraries, such property being upon farms as farm property, shall have the authority to administer oaths to the insured and all persons necessary to be examined as witnesses in the adjustment of losses to the property of persons insured in said companies or associations where such loss was caused by fire or lightning. R. S. 1901, §4892.

77. Co-Insurance Clause—Exceptions.

It shall be unlawful for any fire insurance company doing business in this state to issue any policy or contract of insurance covering property in this state which shall contain any clause or provision requiring the assured to take out or maintain a larger

amount of insurance than that expressed in such policy, nor in any way providing that the assured shall be liable as co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire or lightning to the property described in such policy, and any such clause or provision shall be null and void and of no effect, except that it may be lawful for such insurance companies to issue, and it may be optional with the assured to accept a policy or contract of insurance containing a co-insurance clause or provision when a reduction in the rate for insurance on the property described in such policy is the consideration named, and when so accepted the co-insurance clause or provision shall be binding on the assured and the company: Provided, That the provisions of this act shall not apply to railroad or marine insurance. R. S. 1901, §4859a.

This proviso applies to street railroads. Opinion Attorney-General Ketcham, 1896.

Limiting other insurance to three-fourths cash value is valid, but limiting liability of the company to three-fourths of the value, with *pro rata* liability with other insurance for three-fourths value, is in violation of this section. Opinion Attorney-General Ketcham, 1896.

78. When Co-Insurance Clause Void.

That the insertion of any such clauses, riders or provisions except as provided in the first section (76 herein) of this act shall be null and void. R. S. 1901, §4859b.

79. Penalty.

Any insurance company violating the provisions of this act (sections 76, 77 herein) shall, upon conviction, forfeit its right to do business in this state. R. S. 1901, §4859c.

80. Charges of Violation—Duty of Auditor of State.

Any person, upon knowledge of a violation of the provisions of this act may file with the auditor of state charges in writing, detailing the charge clearly. The auditor of state, upon receiving such notice, shall forthwith give ten days' notice to the president of the insurance company charged with such violation requiring said company to appear before him and show cause why the authority of said company to do business in this state should not be revoked. R. S. 1901, §4859d.

81. Penalty for Failure to Appear.

Any insurance company doing business in this state, failing to appear before the auditor of state as required in notice issued by him, for a period of twenty days after the mailing of such notice

as required by this act, shall be found guilty of having violated its provisions, and the auditor of state shall forthwith suspend such company from doing business in this state until its compliance is made with this act. R. S. 1901, §4859e.

82.. Hearing—Judgment—Penalty.

Upon the appearance of any insurance company charged with a violation of the provisions of this act a full hearing of the charges shall be had before the auditor of state. The auditor of state shall have exclusive jurisdiction of such hearing. After such hearing is had, the auditor of state shall render a judgment of guilty or not guilty; and in case he shall find such insurance company guilty of a violation of this act, he shall forthwith suspend such company from doing business in this state. And said company shall stand so suspended until a full and complete compliance is made by it with the provisions of this act. See R. S. 1901, §4859f.

83. Unlawful to Write Insurance Outside of State in Authorized Company.

That it shall be unlawful for any insurance company legally authorized to transact insurance business in the state of Indiana to write, place or cause to be written or placed any policy, or contract for indemnity for insurance upon property situated or located in the state of Indiana in or through any such legally authorized company, outside of the state of Indiana, and the writing, placing or causing to be written or placed any such policy of insurance is hereby declared to be a violation of the law providing for the payment of taxes by foreign insurance companies, doing business in the state of Indiana, as set out and provided in section eight (8) of an act approved by the general assembly of the state of Indiana, March 9, in the year 1873. R. S. 1901, §4928.

See *In re Pennsylvania, etc.*, Law, 8 Pa. Dist. R. 354; opinion Attorney-General Taylor, 1899.

84. Authority Revoked—When May Be Readmitted.

Any company or companies violating the provisions of the first section (83 herein) of this act, upon notice and satisfactory proof thereof being made to the auditor of the state of Indiana, shall have its or their authority to transact business in the state of Indiana revoked for a period of not less than ninety days. And any insurance company whose license to do business in Indiana may be so revoked by the auditor of state shall not be again permitted to do business in Indiana until all taxes and penalties due thereon

shall have been paid, together with any expenses that may be due under the provisions of this bill, to the auditor of the state of Indiana. And such company shall only be readmitted to transact business in the state of Indiana upon a complete recompliance with the laws now in force in regard to the admission of insurance companies to do business in Indiana. R. S. 1901, §4929.

85. When Auditor of State to Inspect Books—Penalty for Refusal to Exhibit Books.

That when notice of any violation of the first section of this act is received by the auditor of the state of Indiana, that it shall forthwith be his duty, in person or by deputy, to visit the office of such company or companies where such contract of insurance may have been written or made and demand an inspection of the books and records of such company or companies. Any company or companies refusing to exhibit its or their books and records for his inspection shall be deemed guilty of violating the provisions of the first section (83 herein) of this act, and the penalties provided in this act shall immediately be enforced against such company or companies by the auditor of state. R. S. 1901, §4930.

86. Compensation of Auditor of State.

The auditor of state shall receive as compensation for the services rendered under the provisions of this act, his necessary traveling expenses, and ten dollars per diem, which sum shall be charged against the company or companies so visited by him, and collected from such company or companies. R. S. 1901, §4931.

87. Arson Defined—Penalty.

Whoever willfully and maliciously burns or attempts to burn any dwelling-house or other building, finished or unfinished, occupied or unoccupied, whether the building be used or intended for a dwelling-house or any other purpose; or any boat, wharf boat, water craft or vessel, finished or unfinished; any reaping machine, mowing machine, threshing machine, separator, clover huller, wagon, plow, cultivator, or any agricultural or farming implement; or any bridge, whether wholly within this state or not; or any cord wood in a pile; or any rick, stack or shock or grain, hay or straw; or any grain not severed from the ground, or any fence of whatever constructed; or the material intended for the construction of any such house, building, boat, bridge, fence, reaping machine, mowing machine, threshing machine, separator, clover huller, wagon, plow, cultivator or any other agricultural or farming implement; or any tan bark, tree, timber or lumber; or

any railroad car, or a water tank connected with a railroad, the property so burned or attempted to be burned, being of the value of twenty dollars or upward, and being the property of another, or being insured against loss or damage by fire; and the burning or attempting to burn being with intent to prejudice or defraud the insurer, is guilty of arson, and upon conviction thereof shall be imprisoned in the state prison not more than twenty-one years, nor less than one year, and fined not exceeding double the value of the property burned, or attempted to be burned, and should the life of any person be lost thereby, such offender shall be deemed guilty of murder in the first degree, and shall suffer death, or be imprisoned in the state's prison for life. R. S. 1901, §2000.

Burning insured property. Indictment and evidence. *People v. Vasalo* (Cal.), 52 Pac. Rep. 305; *Johnson v. State*, 65 Ind. 204.

CHAPTER V.

STOCK AND MUTUAL LIFE INSURANCE COMPANIES.

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| § 88. Scope of insurance. | § 97. Valuation of policies—May employ actuary — Deposit of reserve with auditor of state—What may be deposited—Valuation of preliminary term policies—Proviso in case of inadequate premium. |
| 89. Form of articles—Name of company — Auditor's approval. | 98. Certificate of auditor of state. |
| 90. Acknowledgement of articles —Submitted to attorney-general—Certificate to secretary of state. | 99. Failure of company to make statement of deposit. |
| 91. Choosing officers — Stock companies open books for subscriptions — Mutual companies open books for applications. | 100. Examination of company by auditor of state. |
| 92. Capital stock and its investment—Deposit with auditor of state—Certificate to do business—Loans to stockholders or officers—Payment of stock subscriptions—Lien on stock. | 101. Impairment of company's solvency — Scaling policy liabilities—Appointment of receiver — Distribution of assets — Charter annulled and dissolution decreed. |
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| <p>§104. Suits interfering with business of company.</p> <p>105. Voluntary dissolution — Notice to auditor of state.</p> <p>106. Company may collect interest on deposits.</p> <p>107. Penalty for doing business without license.</p> <p>108. Suits to recover penalties.</p> <p>109. Investment of funds.</p> <p>110. Right to purchase, hold and convey real estate.</p> <p>111. When must sell real estate.</p> <p>112. Contracts for reinsurance.</p> <p>113. Right to change beneficiary.</p> | <p>§114. Existing companies may re-incorporate hereunder — Certificate of reincorporation.</p> <p>115. Effect of reincorporation.</p> <p>116. Companies exempted from provisions of act.</p> <p>117. Foreign companies.</p> <p>118. Foreign companies — Conditions precedent to admission.</p> <p>119. Revocation of license.</p> <p>120. Companies not affected.</p> <p>121. Fees—Foreign companies.</p> <p>122. Fees—Domestic companies.</p> |
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[Acts 1899, p. 30. In force February 10, 1899.]

88. Scope of Insurance.

Sec. 1. Any ten or more persons, citizens of this state, may associate in accordance with the provisions of this act, and form an incorporated company for the following purposes: To make insurance, either upon the stock or mutual principle, upon the lives of individuals, and every insurance appertaining thereto or connected therewith, and to grant and purchase annuities. R. S. 1901, §4894 l.

89. Form of Articles—Name of Company—Auditor's Approval.

Sec. 2. Such persons shall associate themselves together by articles of incorporation in writing, for the purpose of forming a life insurance company, which articles shall specify the name by which the corporation shall be known, whether a mutual or stock company, the place in which it is to be established or located, the amount of its capital stock, if any, the general objects of the company, and the proposed duration of the same. Any name not previously in use in any existing Indiana company may be adopted, but such name must clearly designate the object and purposes of the company. The auditor of state may reject any name or title when, in his judgment, it too closely resembles that of any existing company, or is likely to mislead the public. R. S. 1901, §4894m.

Right to corporate name. Supreme Court, etc., v. Supreme Court, etc., 94 Wis. 234; Grand Lodge, etc., v. Graham, 96 Iowa 592; International, etc., Co. v. International, etc., Co., 153 Mass. 271, 10 L. R. A. 758; High Court, etc., v. Insurance, etc., 98 Wis. 94; Employers', etc., Corp. v. Employers', etc., Co., 29 N. Y. Supp. 217. Opinion Attorney-General Taylor, 1899.

90. Acknowledgment of Articles—Submitted to Attorney-General—Certificate to Secretary of State.

Sec. 3. The subscribers of said articles of incorporation shall acknowledge the same before some person empowered to take acknowledgments of deeds, and forward the same to the auditor of state, who shall, in case he approves of the title of the proposed company, submit said articles of incorporation to the attorney-general for examination, and if found by the attorney-general to be in accordance with the provisions of this act, and not inconsistent with the constitution of this state, and of the United States, he shall certify the same to the secretary of state, with his approval indorsed thereon, who shall file the same in his office. R. S. 1901, §4894n.

91. Choosing Officers—Stock Companies Open Books for Subscriptions—Mutual Companies Open Books for Applications.

Sec. 4. The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer and such number of directors, not less than five, as they may deem advisable, who shall continue in office until the first annual meeting of the stockholders, or of the insured if a mutual company, and until their successors are duly chosen and qualified as hereinafter provided. In case a stock company is to be organized they shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep the same open until the full amount specified in the certificate is subscribed. In case a mutual company is to be organized for any of the purposes mentioned in this act, the subscribers to the articles of incorporation shall open books to receive applications for insurance at convenient times and places, and keep the same open until applications for insurance have been obtained in sufficient numbers and amount to comply with the requirement of this act. R. S. 1901, §4894o.

See annotation under section 3.

92. Capital Stock and Its Investment—Deposit with Auditor of State—Certificate to Do Business—Loans to Stockholder or Officer—Payment of Stock Subscriptions—Lien on Stock.

Sec. 5. Stock companies organized under this act shall have not less than one hundred thousand dollars (\$100,000) of capital stock subscribed, fifty per cent. of which shall be paid up and invested in bonds of the United States, or of this state, or certifi-

ates of deposit of any solvent bank or trust company, or in bonds and mortgages upon unincumbered real estate in the state of Indiana worth at least double the sum loaned thereon (if buildings are considered as part of the value of such real estate they must be insured for the benefit of the mortgagee), twenty-five thousand dollars of which said securities shall be deposited with the auditor of state, and upon said deposit, and satisfactory evidence to the auditor of state that the capital stock of at least \$100,000 is all subscribed in good faith, and fifty per cent. thereof paid in by the subscribers of said stock and invested as herein prescribed, he shall issue to said company a certificate authorizing said company to do business. But no part of the fifty per cent. aforesaid shall be loaned to any stockholder or officer of the company. The remainder of such stock shall be paid within eighteen months of the time of the subscription, in such sums and at such times as the directors or trustees of the company may direct, and the unpaid balance shall be secured by the notes of the stockholders of said company. The company shall have a lien upon all stock for any sum unpaid thereon. R.S. 1901, §4894p.

See annotation to section 13.

93. Mutual Companies—Deposit with Auditor of State.

Sec. 6. Companies organized under this act upon the mutual plan shall, before issuing any policies, have actual applications on at least two hundred and fifty individual lives for an amount of not less than one thousand dollars each, a list of which applications, giving the name, age, residence, amount of insurance and annual premium of each applicant, shall be filed with the auditor of state, and a deposit made with said auditor of an amount equal to three-fifths of the first annual premium on said applications, and not less than twenty-five thousand dollars in securities required by the last preceding section, and on compliance with said provisions, the auditor of state shall issue to said company a certificate authorizing said company to do business. R. S. 1901, §4894q.

94. Corporate Powers.

Sec. 7. A corporation organized or doing business under the provisions of this act shall, by the name adopted by such corporation in law, be capable of suing or being sued, and may have power to make and enforce contracts in relation to the business of such corporation, may have and use a common seal and may change or alter the same at pleasure; in the name of the corpora-

tion, association or society or by a trustee chosen by their board of directors, shall in law be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization, and may, by their board of directors, trustees or managers make by-laws and amendments thereto not inconsistent with the constitution and laws of this state or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation and the qualifications and duties of the same, with terms of office, and if a mutual company the qualifications and privileges of the members and policy-holders thereof. R. S. 1901, §4894r.

95. Annual Statement—Form of.

Sec. 8. The president, or vice-president, and secretary or actuary, or a majority of the trustees or directors of each company organized under this act, shall, annually, on the first day of January, or within sixty days thereafter, prepare under oath and deposit in the office of the auditor of state, a statement of the condition of such company on the 31st day of December of the preceding year, showing:

First. Name and where located.

1. The names of the officers.
2. The amount of capital stock, if a stock company.
3. The amount of capital stock paid in, if a stock company.

Second. Assets.

1. The value of real estate owned by such company.
2. The amount of cash on hand.
3. The amount of cash deposited in bank or trust companies, giving names of bank or banks or trust companies.
4. The amount of unreported and deferred premiums.
5. The amount of stocks and bonds of the United States, and all other bonds, giving names and amounts, with the par and market value of each kind.
6. The amount of loans secured by first mortgage on real estate.
7. The amount of all other bonds and loans, and how secured, with the rate of interest.
8. The amount of premium notes on policies in force.
9. The amount of notes given for unpaid stock, and how secured.

10. The amount of interest due and unpaid.
11. All other assets.

Third. Liabilities.

1. The amount of losses due and unpaid.
2. The amount of losses adjusted but not due.
3. The amount of losses unadjusted.
4. The amount of claims for losses resisted.
5. The amount of money borrowed.
6. The amount required to safely reinsure all outstanding risks according to the American Experience Table of Mortality, and four per cent. interest per annum, or the Actuaries' Combined Experience Table with same rate of interest.

Fourth. Income during the year.

1. The amount of cash premiums received.
2. The amount of premium notes received.
3. The amount of interest received from all sources.
4. The amount received from all other sources.

Fifth. Expenditures during the year.

1. The amount paid for losses.
2. The amount of dividends paid to policy-holders and to stockholders.
3. The amount of commissions and salaries paid to agents.
4. The amount paid to officers for salaries.
5. The amount paid for taxes.
6. The amount of all other payments and expenditures.

Sixth. Miscellaneous.

1. The greatest amount insured on any one life.
2. The amount deposited in other states and territories as security for policy-holders therein, stating the amount in each state or territory.
3. The amount of premiums received in this state during the year.
4. The amount paid for losses in this state during the year.
5. The whole number of policies issued during the year, with the amount of insurance affected thereby, and total amount of insurance at risk. R. S. 1901, §4894s.

96. Auditor of State May Amend Form.

Sec. 9. The auditor of state is authorized to amend the form of annual statement, and to propose such additional inquiries as he

may think necessary to elicit a full exhibit of the standing of companies organized or doing business under this act. R. S. 1901, §4894t.

97. Valuation of Policies—May Employ Actuary—Deposit of Reserve with Auditor of State—What May Be Deposited—Valuation of Preliminary Term Policies—Proviso in Case of Inadequate Premium.

Sec. 10. As soon as practicable after the filing of said annual statement of any company organized and doing business under the provisions of this act, in the office of the auditor of state, he shall proceed to ascertain the net cash value of each policy in force on the thirty-first day of December immediately preceding, upon the basis of the American Experience Table of Mortality and four per cent. interest, or Actuaries' Combined Experience Table of Mortality and four per cent. interest, as adopted by the company, and should any such company issue any policies based upon a higher standard than the above, such policies shall be valued according to such higher standard. For the purpose of making such valuation, the auditor of state may employ a competent actuary to do the same, who shall be paid by the company for which the services are rendered; but nothing herein shall prevent any company from making said valuation herein contemplated, which may be received by the auditor of state upon such proof as he may determine. Upon ascertaining, in the manner above provided, the net cash value of all policies in force in any company organized or doing business under this act, the auditor of state shall notify said company of the amount thereof, and within ninety days after the date of such notification, the officers of such company shall deposit with the auditor of state, for the security and benefit of all its policy-holders, an amount which, together with the sum already deposited with said officer and such sums as may be deposited by said company with other states or governments, by the requirements of the laws of such other states or governments in which said company is doing business shall be not less than the amount of such ascertained valuation of all policies in force in the securities described in section 22 (109 herein) of this act, or in certificates of deposit in any solvent bank or trust company, or satisfactory evidences of ownership of unencumbered, improved real estate, as may be lawfully acquired by such company under the provisions of this act, at such value as may be determined upon by two disinterested appraisers, residing in the county in which the real estate is situated; such appraisers to be approved by the audi-

tor of state. Such real estate shall not be sold or encumbered, unless securities of equal value as herein required be deposited with the auditor of state in lieu thereof. But no company organized under this act shall be required to make such deposit until the net cash value of the policies in force, as ascertained by the auditor of state, exceeds the amount deposited by said company under sections 5 and 6 hereof (92 and 93 herein): Provided, That the auditor of state, or anyone acting for him or on his behalf, in making any valuation of the policies of any life insurance company, incorporated under the laws of the state of Indiana, for the purpose of ascertaining the net cash value of outstanding policies, or for the purpose of ascertaining the reserve of outstanding policies of any such company, or for the purpose of ascertaining the policy liability of any such company, shall compute such net cash value, reserve or policy liability, according to the terms of each policy outstanding, and should any policy provide that any time covered thereby is term insurance, or for a valuation as term insurance for any time covered by such policy, the valuation of such policy shall be in accordance with any such provision in such policy: And provided further, That in every case in which the actual premium charged for an insurance is less than the net premium for such insurance, computed according to its respective tables of mortality and rate of interest, the company shall also be charged with the value of an annuity, the amount of which shall equal the difference between the premium charged and that required by the rules above stated, and the term of which in years shall equal the number of future annual payments due on the insurance the date of the valuation. As amended, Acts 1903, p. 45.

See *People v. American, etc., Co.*, 147 N. Y. 45.

Loan on reserve value of policies proper deposit with auditor. Opinion Attorney-General Taylor, December 26, 1900.

98. Certificate of Auditor of State.

Sec. 11. On receipt of the deposit and statement from any company as provided in the preceding sections, which shall be renewed annually, the auditor of state shall issue a certificate setting forth the corporate name of the company, its principal office, that it has fully complied with the provisions of this act; stating the amount deposited, and the net cash value of outstanding policies, and the table upon which same is computed, and that it is authorized to transact the business of life insurance: Provided, That any such certificate shall expire on the 30th day of May, in the year following its issue. R. S. 1901, §4894v.

99. Failure of Company to Make Statement or Deposit.

Sec. 12. Upon the failure of any company, organized or doing business under this act, to make the deposit or file the statement in the time stated herein, the auditor of state shall notify such company to issue no new policies in this state until there shall have been compliance with said requirement. R. S. 1901, §4894w.

100. Examination of Company by Auditor of State.

Sec. 13. The auditor of state may at any time make a personal examination of the books, papers and securities of any life insurance company organized or doing business under this act, or may authorize or empower any other suitable person to make such examination, and for the purpose of securing a full and true exhibit of its affairs, he, or the person selected by him to make such examination, shall have power to examine, under oath, any officer of said company relative to its business and management. R. S. 1901, §4894x.

101. Impairment of Company's Solvency—Application for Receiver—Duty of Court—Annulment of Charter.

Sec. 14. If the auditor of state shall, at any time, find from any report, examination or otherwise, that the assets of any life insurance company organized or doing business under this act, are less than its liabilities, exclusive of capital stock, he may notify it to cease the issue of new policies, or the payment of dividends to stockholders or policy-holders, or both, until the deficiency be made good; and he may, and if it appear to him that the assets of such company are less than three-fourths of its liabilities, exclusive of capital stock, he shall communicate the facts to the attorney-general, who shall, if by him deemed advisable, at once apply to the circuit or superior court of the county, where the principal office of said company is located, for a receiver for said company, and said court shall forthwith issue a citation to such company, to appear at a day and place to be named therein, and answer to said application; and if, upon the hearing of said application, the said court shall find the assets of the said company to be less than its liabilities, as aforesaid, said court may, and if the assets are found to be less than three-fourths of its liabilities, as aforesaid, shall make such order with reference to the matter as shall be for the best interests of the policyholders, or, if it be not practicable to continue the business, provide for the reinsurance of its outstanding policies, in some solvent company doing business in this state; or, if this is impossible, such court shall appoint some disinterested

person or persons to be receiver or receivers of the said company; and said court may provide the mode of proving said claims against such company and appoint a committee to hear and decide upon them, and may limit and extend the time for the presentation of such claims, and may make all necessary orders in reference to the delivery to and possession of such receiver of the assets and property of such company, and the sale and conveyance of the same by him, and may direct the application of the avails of such assets and property equitably in satisfaction of the claims proved against such company, and the payment of the present net cash value of its outstanding policies to policy-holders, either in whole or in part; and said court shall annul the charter and decree the dissolution of such company, and make all other orders and decrees necessary and proper in reference to winding up the affairs of such company and the disposition of its property. As amended, Acts 1903, p. 47.

Appointment of receiver does not annul an action brought by policy-holders. *Bedell v. North American, etc., Co.*, 7 Daly 273; *Writner v. Universal, etc., Co.*, 4 Abb. N. C. 23.

Appointment of receiver can not be questioned collaterally in another tribunal. *Attorney-General v. Guardian, etc., Co.*, 77 N. Y. 272.

Interested parties may appear and can appeal from orders regarding their rights. *Attorney-General v. North American, etc., Co.*, 77 N. Y. 297; *People v. Atlantic, etc., Co.*, 74 N. Y. 177.

Receiver is entitled to have proceeds from securities sold by auditor of state immediately turned over to him. *Attorney-General v. North American, etc., Co.*, 80 N. Y. 152.

Claims must be exhibited within time mentioned in notice. *People v. Security, etc., Co.*, 78 N. Y. 114.

Contract between company and agent dissolved so far as claims for salary are concerned, by appointment of receiver. *People v. Globe, etc., Co.*, 91 N. Y. 174.

Also, see annotation to case of *B. & A. R. Co. v. Mercantile, etc., Co.*, 38 L. R. A. 97.

102. Change in Securities Deposited—Withdrawal of Securities.

Sec. 15. Companies shall have the right at any time to change their securities on deposit, by substituting for those withdrawn a like amount in other securities of the character provided for in this act, and whenever the net cash value of policies outstanding and in force against any company is less than the amount of security then on deposit with the auditor of state, said company shall have the right to withdraw such excess; but at least twenty-five thousand dollars shall remain on deposit. As amended, Acts 1903, p. 48.

Exchange of securities should only be made on the basis of equal price and market values. *In re Continental Ins. Co.* Opinion Attorney-General of New York, December 18, 1896.

103. Examination at Request of Company—Expense of Examination Paid by Company.

Sec. 16. The auditor of state shall, at the request of any company doing business under the provisions of this act, make an examination of such company, and shall furnish a certificate of the results of such examination, showing all of its assets and how they are invested, with such other particulars as may be deemed necessary to show the character and condition of said company. The necessary expense of such examination shall be paid by the company. R. S. 1901, §4894a1.

104. Suits Interfering with Business of Company.

Sec. 17. No order, judgment or decree, providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any insurance corporation, association or society, organized or doing business under the provisions of this act, or appointing a temporary or permanent receiver thereof shall be made or granted otherwise than upon the application of the attorney-general on his own motion, or after his approval of a request in writing therefor by the auditor of state, except in an action by a judgment creditor or in proceedings supplementary to execution. R. S. 1901, §4894b1.

Member can not enjoin enforcement of assessments against him. *Seymour v. Mutual, etc., Assn.*, 14 Misc. 151.

This section forbids action by policy-holder to compel company to create reserve fund provided by contract. *Swan v. Mutual, etc., Assn.*, 155 N. Y. 9.

This section is constitutional. *Swan v. Mutual, etc., Assn.*, 155 N. Y. 9.

See *Lowery v. State Life Ins. Co.*, 153 Ind. 100; *Muller v. State Life Ins. Co.*, 27 Ind. App. 45.

105. Voluntary Dissolution—Notice to Auditor of State.

Sec. 18. If at any time any company organized under this act shows to the circuit or superior court of the county where its principal offices are located, that it wishes to retire from business, that it has reinsured all of its policies, and that it has no unpaid liabilities of any character, such court shall, if it finds such facts to be true, enter an order directing the auditor of state to surrender to said company all funds or securities theretofore deposited with him by such company. No such order shall be made until the

auditor of state shall have been notified of the pendency of such application at least ten days before the time set for the hearing thereof, and until after a full hearing by said court. R. S. 1901, §4894c1.

106. Company May Collect Interest on Deposits.

Sec. 19. The auditor of state shall permit companies having on deposit with him stocks or bonds as security, to collect the interest accruing on such deposits, delivering to their authorized agents, respectively, the coupons or other evidences of interest as the same become due; but upon default by any company to deposit additional security as called for by the auditor of state, or pending any proceedings to close up or enjoin it, the auditor of state shall collect the interest as it becomes due, and add the same to the securities in his hands belonging to such company. R. S. 1901, §4894d1.

See *People v. American, etc., Co.*, 147 N. Y. 25. The doctrine of estoppel applies in favor of the superintendent as to stock deposits. *Smyth v. Monroe*, 84 N. Y. 354.

107. Penalty for Doing Business Without License.

Sec. 20. Any company organized or doing business under this act without a certificate as provided for in either section 5 or 6 or in section 11 (92, 93 and 98 herein) of this act, shall forfeit one hundred dollars for every day it continues to write new business in this state without such certificate. R. S. 1901, §4894e1.

108. Suits to Recover Penalties.

Sec. 21. Suits brought to recover any of the penalties provided for in this act shall be instituted in the name of the state of Indiana on relation of the prosecuting attorney of the circuit court of the county in which the principal office of said company is located, under the direction and by the authority of the auditor of state. Said penalties, when recovered, shall be paid into the state treasury for the use of the school fund. R. S. 1901, §4894f1.

109. Investment of Funds.

Sec. 22. No company organized under the provisions of this act shall invest its funds in any other manner than as follows: In bonds of the United States, in bonds of this state or of any state, country or province in which said company is transacting an insurance business, if at or above par; in legal tender money of the United States; in bonds and mortgages on unincumbered real estate within this state, or in any other state or country in

which said company is transacting an insurance business, worth at least double the amount loaned thereon, and the value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located (if buildings are considered a part of the value of such real estate they must be insured for the benefit of the mortgagee); in bonds or othr evidence of indebtedness, bearing interest, of any county, incorporated city, town, township or school district within this state, or in any other state or country in which said company is transacting an insurance business, where such bonds or other evidences of indebtedness are issued by authority of law, and upon which interest has never been defaulted; in loans upon the pledge of stock, bonds or mortgages of par value, if the current value of such stock, bonds or mortgages is at least twenty-five per cent. more than the amount loaned thereon, and in loans upon its own policies: Provided, That the amount so loaned shall not exceed the reserve against said policy at the time such loan is made: Provided, That in the annual certificate furnished by the auditor of state to any such company he shall name all deposits and the amount thereof made by such company with any other state or country, which deposits must be of the character of securities herein provided for. As amended, Acts 1905, p. 181.

110. Right to Purchase, Hold and Convey Real Estate.

Sec. 23. No company organized under this act shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

2. Such as shall have been mortgaged to it in good faith by way of security for loans, for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or,

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts, and no company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purpose. R. S. 1901, §4894h1.

111. When Must Sell Real Estate.

Sec. 24. All real estate acquired as aforesaid, except such as is occupied by buildings used in whole or in part for the accommodation of such company in the transaction of its business, shall,

except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall hold such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the auditor of state that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the said auditor of state shall direct in said certificate. R. S. 1901, §4894i1.

Failure to sell within such time without certificate does not affect title. *Home Ins. Co. v. Head*, 30 Hun 405.

112. Contracts for Reinsurance.

Sec. 25. No corporation organized or doing business under this act shall transfer its risks to or reinsure them in any other corporation, association or society, unless the contract of transfer or reinsurance is first submitted to and approved by a two-thirds vote of a meeting of the insured, called to consider the same, of which meeting a written or printed notice shall be mailed to each policyholder at least thirty days before the day fixed for such meeting. No such corporation organized or doing business under this act shall transfer its risks or assets, or any part thereof, to or reinsure its risks, or any part thereof, in any insurance corporation, association or society of any other state or country, which is not at the time of such transfer or reinsurance authorized to do business in this state under the laws thereof: Provided, however, That the foregoing declaration shall not prevent a company from reinsuring half of its over average policies in other solvent companies authorized to do business in this state by paying therefor agreed premiums in annual, semiannual or quarterly installments. R. S. 1901, §4894j1.

Rights of members and reinsuring company in reserve fund. *Insurance Commissioner v. Provident Aid Society*, 89 Maine 413.

113. Right to Change Beneficiary.

Sec. 26. The insured in any such corporation shall have the right at any time, with the consent of such corporation, to make a change in his payee or payees, or beneficiary or beneficiaries, without requiring the consent of such payee or beneficiaries, provided such policy has not been assigned as security for a debt, or other legal consideration. R. S. 1901, §4894k1.

See annotation under §157.

114. Existing Companies May Reincorporate Hereunder—Certificate of Reincorporation.

Sec. 27. Any domestic corporation, association or society, organized under any law of this state, transacting business of life insurance, may be reincorporated or reorganized under the provisions of this act, under its existing corporate name, by filing with the auditor of state a declaration of its desire to do so, signed and duly acknowledged by a majority of its board of directors, trustees or managers, with a statement in like manner, signed and acknowledged by them, that such corporation, association or society has insured the requisite number of lives as herein provided, or, if a stock company, that it has complied with the requirements of this act, concerning subscriptions to its capital stock, and provided also, they have deposited with the auditor of state securities herein provided for, whereupon the auditor of state shall file the same, together with his certificate of such filing, with the secretary of state, who shall issue to such corporation, association or society a certificate of such reincorporation or reorganization, under the seal of the state, and attach thereto copies of all papers so filed with the secretary of state, and the same shall be recorded in the office of the secretary of state, and copies thereof filed in the office of the auditor of state, and such corporation, association or society shall thereupon be deemed to be reincorporated or reorganized under the provisions of this act. Any such company having on deposit with the auditor of state securities of the quality herein required may use the same in whole or in part for making the deposits herein provided for. R. S. 1901, §489411.

Reincorporating hereunder, must make same deposit as if incorporated under this act. Opinion Attorney-General Taylor, March 19, 1901.

Fees for reincorporation same as if original articles of incorporation were filed under this act. Opinion Attorney-General Taylor, 1899.

See *Iverson et al. v. Minnesota Mut. Life Ins. Co.*, 137 Fed. 268; *Polk et al. v. Mutual Reserve Fund Life Assn.*, 137 Fed. 273.

115. Effect of Reincorporation.

Sec. 28. Such reincorporation or reorganization shall not affect or change the corporate identity of such company, nor shall it affect in any manner its corporate rights or liabilities, all of which shall, after such reincorporation or reorganization, remain vested in, or continue against, the said company as reincorporated or reorganized as they would if there had been no reincorporation or reorganization except that assessment companies reorganizing under this law may, with the consent of any policy-holder of such

company, waive any provision contained in his policy or certificate of membership, providing for assessing members or reserving the right to call for any additional premiums, usually known as the emergency or safety clause. R. S. 1901, §4894m1.

116. Companies Exempted from Provisions of Act.

Sec. 29. Nothing in this act shall be construed as affecting or governing life insurance companies, associations or societies or accident insurance companies doing business on the assessment plan, or organized under any other law of this state, but such life insurance companies may reincorporate and avail themselves of the provisions of this act by complying with conditions as hereinbefore provided in this act. R. S. 1901, §4894n1.

See annotation under §164.

117. Foreign Companies—When Admitted.

Sec. 30. Any life insurance company organized under the laws of any other state, possessed of not less than \$100,000 of assets, and which has on deposit with the insurance department of the state in which it is organized the net cash value of all policies in force on the 31st day of December immediately preceding its application for a license to do business in this state, upon the basis of the American Experience Table of Mortality and four per cent. interest, or Actuaries' Combined Experience Table of Mortality and four per cent. interest: Provided, That the amount of such deposit of the net cash value shall not be less than twenty-five thousand dollars, and provided that said assets, as above specified, shall be invested in the securities provided for the investment of the funds of companies organized under this act, shall, upon compliance with the succeeding sections of this act, be entitled to do business in Indiana. As amended March 8, 1901—Acts 1901, p. 321. R. S. 1901, §4894o1.

118. Foreign Companies—Conditions Precedent to Admission.

Any such life insurance company, as a condition precedent to transacting business in this state, shall deposit with the auditor of state a certified copy of its articles of incorporation or association, a certified copy of a vote or resolution of the board of directors of said company consenting that service of process in any suit against such company may be served upon the auditor of the state of Indiana with like effect as if such company was chartered, organized or incorporated in the state of Indiana; and agreeing that any process served upon such auditor shall be of the same

legal force and validity as if served upon such company, and agreeing that such service may be so made with such effect while any liability remains outstanding against such company in this state; a statement, under oath, of its president and secretary in the form by the auditor of state required of its business for the preceding year; evidence satisfactory to the auditor of state that such company has accumulated the net value of its policies and has deposited the same with the insurance department of the state in which it is organized, as required by section 1 (117 herein) of this act; that such accumulation and deposit is permitted by the law of the corporation or the law of the state and is for the benefit of policy-holders only, and is invested in securities authorized under the law of its incorporation or association. The auditor of state shall thereupon issue or renew the authority of such company. As amended, Acts 1901, p. 321. R. S. 1901, §4894p1.

119. Revocation of License.

Whenever the auditor of state is satisfied on investigation that any such company has violated any of the conditions of the preceding section, or has not deposited the full net value of its policies with the insurance department of the state in which it is organized for the benefit of its policy-holders only, then, it shall be the duty of the auditor of state to revoke the license of any such company to do business in this state. Upon such revocation, the auditor of state shall cause a notice thereof to be published in a newspaper of general circulation published in the city of Indianapolis, Indiana, and no new business shall be thereafter done by the agents of such company in this state. As amended, Acts 1901, p. 322. R. S. 1901, §4894q1.

120. Companies Not Affected.

Nothing in this act shall affect companies possessed of assets required by the provisions of section one (1) (287 herein) of the "Act regulating foreign insurance companies doing business in this state, prescribing the duties of the agents thereof, and of the auditor of state in connection therewith, and providing penalties for the violation of the provisions of this act." As amended, Acts 1901, p. 323. R. S. 1901, §4894r1.

121. Fees.

The auditor of state shall collect from any such company, doing business in this state, such fees as are required to be paid by foreign insurance companies doing business in this state. As amended, Acts 1901, p. 323. R. S. 1901, §4894s1.

122. Fees of Auditor of State.

Sec. 31. The auditor of state shall charge for filing the preliminary statement or for filing the annual statement required by the provisions of this act, and for issuing the license or authority to do business, the same fees as are now required by law of companies of other states and countries doing business in this state for similar services. R. S. 1901, §4894t1.

CHAPTER VI.**MUTUAL LIFE, HEALTH AND ACCIDENT COMPANIES.***Organization and Powers.*

§123. How organized—Premiums—Charter perpetual.

123. How Organized—Premiums—Charter Perpetual.

That mutual insurance companies may be organized for the insurance of the lives or health of persons, or against accident to persons, upon the same conditions and subject to the same duties and liabilities now regulating mutual fire insurance companies, so far as the same may be applicable: Provided, That any such company may, at the time of issuing a policy, receive the full amount of premiums agreed upon, in which case the assured shall not be liable to any assessment on account of losses, nor entitled to participate in the profits accruing to such companies: And provided, further, That policies issued may be for the life of a person or persons applying for insurance, or for any determinate period, and upon such an amount of value as may be agreed upon by the parties, and those life insurance companies organized under said law shall be perpetual. R. S. 1901, §4895.

See annotation under §49.

Policy-holder who has given premium note can not avoid liability by transferring his interest in the company to one agreed on as of equal responsibility. Opinion Attorney-General Ketcham, 1898.

This section not changed by amendment of the fire insurance laws (Elliott's Supp. 1016). Opinion Attorney-General Ketcham, 1897.

CHAPTER VII.

LIFE AND ACCIDENT ASSESSMENT ASSOCIATIONS.

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| <p>§124. Life and accident assessment associations—Organization—License.</p> <p>125. Name—Corporate powers.</p> <p>126. Directors, number, election, terms.</p> <p>127. Directors to fix premiums—Notice of assessment.</p> <p>128. Reincorporation of existing associations.</p> <p>129. What corporations bound by this act—Who exempt.</p> <p>130. Reserve or emergency fund—Investment—When used to reduce payments—Payments to living policy-holders.</p> <p>131. Limit of age—Assignment of policy.</p> <p>132. Reports to auditor of state—Penalty.</p> <p>133. Accident companies bound by this act.</p> <p>134. Accident, reserve or emergency fund—How used—How invested.</p> <p>135. Annual reports to auditor of state—Form of—Penalty.</p> <p>136. Reserve fund not limited—May deposit securities with auditor—Investment.</p> | <p>§137. Policy, payments specified—Must pay maximum sum—Duty of auditor on failure to pay.</p> <p>138. Reinsurance of risks.</p> <p>139. Examinations by auditor of state.</p> <p>140. Books open to inspection—Corporation insolvent, auditor's duty.</p> <p>141. Proceedings for appointment of receiver.</p> <p>142. Foreign corporations, admission—Duties of auditor—Agreement with foreign corporation—Reciprocal obligations.</p> <p>143. Service of process on foreign corporations — Auditor's duty—Plaintiff to pay fee.</p> <p>144. Penalty for false statement in application.</p> <p>145. Right to change beneficiary.</p> <p>146. Benefits not liable to attachment.</p> <p>147. Penalties for violations of act.</p> <p>148. Fees to auditor.</p> <p>149. Who exempt from provisions of this act.</p> <p>150. Certificate to state definite amount.</p> <p>151. Failure to pay in full—Penalty—Exception.</p> |
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124. Life and Accident Assessment Associations—Organization—License.

Any number of persons, not less than five, a majority of whom are citizens of this state, may associate themselves together as a corporation, association or society, for the purpose of transacting the business of life or accident, or life and accident insurance and for the payment of partial or permanent disability claims to living members upon the assessment plan for the purpose of mutual protection and relief of its members, and for the payment of stipu-

lated sums of money to the families, heirs, executors and administrators or assigns of the deceased members, or for the payment of total and permanent disability claims to living members of such company, association or society as the member may direct, in such manner as may be provided in the by-laws; and may receive money, either by voluntary donation or contribution, for which purpose they shall make, sign and acknowledge, before any officer authorized to take acknowledgment of deeds in this state, articles of incorporation or association, in which shall be stated the name or title by which such corporation, association or society shall be known in law, the location of its principal business office (which office must be located in this state), the names and residence of the persons signing the articles of incorporation or association, the object of the corporation, association or society, with its plan of doing business clearly and fully defined, the number of its directors, trustees or managers and the names of those selected to serve until its first annual meeting, and, in case of life corporations, associations or societies, the limit as to age of applicants for membership, which shall not exceed sixty-five years, and that medical examinations are required, but no medical examination shall be required in case of accident corporations, associations or societies, and that bona fide applications have been secured for two hundred thousand dollars by not less than two hundred persons, who have each made application for membership in such proposed corporation, association or society, and in case of a life corporation have each been examined and recommended by a reliable physician, and in all cases have each deposited with the parties asking the certificate for such corporation, association or society the sum of two dollars on each one thousand dollars of insurance applied for, as an advance assessment for mortuary or accident or disability indemnity purposes, as the case may be; which certificate of association and applications, together with the certificate of some solvent bank or banks that all such advance funds are deposited therein to be turned over to the treasurer of such corporation, association or society when organized, shall be submitted to the auditor of the state, who shall carefully examine the same, and if he shall find that the objects and purposes are fully and definitely set forth, and are clearly within the provisions of this act, and that the name or title is not the same, or does not so closely resemble a title in use as to have a tendency to mislead the public, the auditor of state shall submit the same to the attorney-general for examination, and if found by him to be in accordance

with this chapter, and not inconsistent with the constitution and laws of the United States and of this state, he shall certify to and deliver the same to the secretary of state, who shall cause the same, with the certificate of the attorney-general, to be recorded in a book to be kept for that purpose; and, upon application of the signers thereof, the secretary of state shall furnish to them a certified copy of such articles and certificates under his hand and the seal of this state, and the secretary shall thereupon file in the office of the auditor of state a certified copy of all papers pertaining to the organization of such corporation, association or society. Thereupon the auditor of state shall issue a license authorizing said corporation, association or society to transact the business set forth in the certificate of incorporation. Such corporation, association or society shall deposit with the auditor of state a copy of all its forms of policies issued by them, together with a copy of its by-laws and all forms of application for insurance. R. S. 1901, §4914a.

Can not issue policy to infant. Opinion Attorney-General Taylor, 1899.

Articles must show, among other things, medical examinations are required; that two hundred persons have been examined and recommended by a reliable physician, and that each has deposited two dollars with the parties asking the certificate. Opinion Attorney-General Ketcham, 1897; also, see opinion Attorney-General Taylor, 1898.

125. Name—Corporate Powers—By-Laws.

A corporation, association or society, organized under the provisions of this act, shall, by the name adopted by such corporation, association or society, in law be capable of suing and being sued, and may have power to make and enforce contracts in relation to the business of such corporation, association or society; may have and use a common seal and may change or alter the same at pleasure, and in the name of the corporation, association or society, or by a trustee chosen by their board of directors, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal property for the purposes of their organization, may by their board of directors, trustees or managers, make by-laws not inconsistent with the constitution and laws of this state or of the United States, which by-laws shall define the manner of electing directors, trustees or managers, or officers of such corporation, association or society, and the qualifications and duties of the same, with terms of office not exceeding three years, also the qual-

ifications and privileges of the members thereof. R. S. 1901, §4914b.

Suit against company must be filed in county where principal office is located. *Globe, etc., Co. v. Reid*, 49 N. E. Rep. 291.

See §200 herein.

126. Directors, Number, Election, Terms.

The affairs of all corporations, associations or societies organized or doing business under the provisions of this act shall be managed by not less than five directors, trustees or managers, a majority of whom shall be residents of the state of Indiana, who shall be elected from and by the members at such time and place and for such period not exceeding three years as may be provided for in the by-laws, and may be eligible for re-election: Provided, That, as near as practicable, an equal number shall be elected each year. Whenever directors, trustees or managers shall be elected, a certificate, under the seal of the corporation, association or society, giving the names and residences of those elected and the term of their office, shall be filed in the office of the auditor of state. Vacancies in the board of directors, trustees or managers shall be filled in the manner provided in the by-laws. Such board of directors, trustees or managers shall fix the compensation to be paid to all officers and managers of such corporation, association or society. R. S. 1901, §4914c.

127. Directors to Fix Premiums—Notice of Assessments.

The trustees, directors or managers, or the persons designated in the by-laws of the corporation, association or society subject to the provisions of this act, shall fix the fee rates and amounts of premiums, assessments or periodical calls, and the time and manner of the payment thereof, and the risks to be assumed by such corporation, association or society, and the duration thereof, and may change the same from time to time as the experience of the corporation, association or society may require. An affidavit made by the person having charge of the mailing of notices of premiums, assessments or periodical calls that any such notice was mailed to his last postoffice address, stating the date of mailing, shall be prima facie evidence thereof. R. S. 1901, §4914d.

Members are liable for assessments though their policies may be void through their own acts. *Insurance Co. v. Prosser*, 11 Iowa 115. The non-payment of assessments does not terminate such liability of the insured, although the policy provides that if an assessment be not paid within thirty days, the policy shall be void. *Insurance Co. v. Buckley (Pa.)*, 6 Ins. L. J. 631. Members can not take advantage of irregularities on the

part of the association to escape payment of assessments. *Insurance Co. v. Belknap*, 12 Cush. 140; *Sands v. Hill*, 42 Barb. 651. Forfeiture of rights under a policy does not necessarily release the member from liability to assessments. *Korn v. Insurance Co.*, 6 Cranch 192. It is not part of the contract that the insured may free himself from the liability the contract imposes by breaking it; a certificate holder may be compelled to pay assessments against his will during life. *American, etc., Co. v. Henley*, 60 Ind. 515. Also see *Insurance Co. v. Underwood*, 3 Gray 210; *Insurance Co. v. Prosser*, 11 Iowa 115; *McDonald v. Ross*, 29 Hunter 87. That insured may refuse to pay assessments and thus relieve himself from liability for future assessments, see *Lehman v. Clark*, 174 Ill. 279; *Gibson v. Megrew*, 154 Ind. 273; *Clark v. Schromeyer*, 23 Ind. App. 565.

The beneficiary of a certificate can compel an association to levy an assessment, the court will oblige the officers to assess, or in event of their failure to do so, the court, at an additional expense to the members, may do so through its own officers. *Smith v. Covenant, etc., Assn.*, 24 Fed. 685. The court may compel the association to exhibit its books to show the membership for the purpose of enforcing an assessment on each. *Lender's, etc., v. Insurance Co.*, 4 McCreary 149.

128. Reincorporation of Existing Associations.

Any domestic corporation, association or society, transacting business of life or accident or life and accident insurance and providing for the payment of total and permanent disability claims to living members, upon the assessment plan, may be reincorporated or reorganized under the provisions of this act, under its existing corporate name by filing with the auditor of state a declaration of their desire to do so, signed and duly acknowledged by a majority of its board of directors, trustees or managers, with a statement in like manner signed and acknowledged by them that such corporation, association or society, having insured the lives or provided for the payment of accident indemnity, has accumulated the fund required by section 7 (125 herein) of this act, or having engaged in the business of accident insurance only, has accumulated the fund required by section 11 (129 herein) of this act, and that such funds are safely invested and held for the purposes for which the same were accumulated, as provided in the by-laws of such corporation, association or society, whereupon the auditor of state, if approved by him, shall file the same, together with his certificate of such approval, with the secretary of state, who shall issue to such corporation, association or society a certificate of such reincorporation or reorganization, under the seal of the state, and attach thereto copies of all papers so filed with the secretary of state, and the same shall be recorded in the office of the secretary of state, and copies thereof filed in the office of the auditor of state, and such corporation, association or society shall there-

upon be deemed to be reincorporated and reorganized under the provisions of this act. It shall not be obligatory upon any such existing corporation, association or society to incorporate or reincorporate hereunder, and any such domestic corporation, association or society may continue to exercise all the rights, powers and privileges not inconsistent with this act, pursuant to its articles of incorporation or association, the same as if incorporated or reincorporated under this act. R. S. 1901, §4914e.

Companies incorporated previous to passage of this act are not compelled to reincorporate hereunder, and are not bound by its provisions unless they seek to avail themselves of its benefits. Opinion Attorney-General Ketcham, 1898. See opinion Attorney-General Taylor, 1899.

129. What Corporations Bound by This Act—Who Exempt.

Any incorporation, association or society organized to insure lives which provides for the payment of policy claims, or the accumulation of reserve or emergency claims, and the expenses of the management and prosecution of the business by payments to be made either at periods named in the contract or upon assessments as required, by persons holding similar contracts, and wherein the insured's liability to contribute to the payment of policy claims accrued or to accrue is not limited to a fixed sum, shall be deemed to be engaged in the business of life insurance upon the assessment plan, and shall be subject only to the provisions of this act; but nothing herein contained shall be construed as applicable to any association of religious or secret societies, or to any class of mechanics, express, telegraph or railroad employes, or ex-Union soldiers, formed for the mutual benefit of the members thereof and their families, exclusively, or to any secret or fraternal societies, lodges or councils that may be organized or that now are organized and doing business in this state, which conduct their business and secure members on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges or councils and which are under the supervision of the grand or supreme body, nor to any association organized solely for benevolent purposes and not for profit. R. S. 1901, §4914f.

Elliott v. Monroe City, etc., Co., 76 Mo. App. 562.

130. Reserve or Emergency Fund—Investment—When Used to Reduce Payments—Payments to Living Policy-Holders.

Every such life insurance corporation, association or society shall accumulate and maintain a reserve or emergency fund equal to such sum as might be realized from one assessment on, or periodical payment by policy—or certificate—holders thereof, and in

no event less than the amount of its maximum policy or certificate. Such fund, if not already accumulated, shall be accumulated by every such existing corporation, association or society, within six months from the time this act takes effect, and by every corporation, association or society hereafter formed under this act, within six months from the date of its incorporation or organization, and shall be held as a trust fund for the purposes for which such fund was created or accumulated. In case such fund or any portion thereof shall have been used by the corporation, association or society for the purpose or purposes for which the same was created or accumulated and the amount thereof thereby reduced to less than the amount of one death assessment or periodical payment, the amount of such reduction below the amount of one death assessment or periodical payment shall be made up and restored to said fund within six months thereafter. Such fund may be held in cash or invested in the same class of securities required by law for the investment of funds by insurance corporations; and nothing herein contained shall prevent the creation and accumulation of other funds in excess of the amount herein required to provide for the purposes of such corporation, association or society. If such fund is in excess of the amount of one death assessment or periodical payment upon all certificate or policy-holders and not less than the sum of fifty thousand dollars, the excess or any portion thereof may be used in the reduction of assessment or periodical payments by policy or certificate holders by ratable cash dividends or credits, or in such other equitable division or apportionment thereof as its by-laws or rules may provide, and such use shall not be deemed or construed to mean a profit received by members within the meaning of the statutes of this state, or the pro rata excess on any policy or certificate terminated by death or surrender may be refunded to the policy-holder or beneficiary, as may be provided for in said policy or contract: Provided, That nothing contained in this act shall be construed to permit any contract promising any fixed cash payment to any living certificate or policy-holder, excepting in the contingency of physical disability. R. S. 1901, §4914g.

Company prohibited to promise a cash payment to a living certificate-holder, estimated or calculated, but not absolutely fixed. Opinion Attorney-General Ketcham, 1898; *Calkins v. Bump*, 79 N. W. 491.

Conditions under which may give extended and paid-up insurance, cash surrender values, etc. Opinion Attorney-General Taylor, 1900.

Vice-Counselor or special contracts with policy-holders are valid. *Muller v. State Life Ins. Co.*, 27 Ind. App. 45.

131. Limit of Age—Assignment of Policy.

No corporation, association or society doing business of life insurance under this act shall issue a certificate or policy upon the life of any person more than sixty-five years of age, excepting in case of transfer of policy-holders as provided herein, nor upon a life in which the beneficiary named has no insurable interest. Any assignment of the policy or certificate to a person having no insurable interest in the insured life, except as security for actual debt, with remainder over to the beneficiary or to the estate of the insured, shall render such a policy or certificate void. R. S. 1901, §4914h.

132. Reports to Auditor of State—Penalty.

Every such life insurance corporation, association or society doing business under this act shall, on or before the first day of March in each year, make and file with the auditor of state, a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which report shall be in lieu of all other reports required by the insurance laws of this state, and shall be in such form as the auditor of state may require. Such report shall be verified by such of the officers of the corporation, association or society as the auditor of state may require. Any corporation, association or society refusing or neglecting to make such report, or to make payment of any of the fees required by law, shall, upon the order of the auditor of state, cease to do business in this state until such report and payment shall be made, and until the costs of such action be paid. R. S. 1901, §4914i.

133. Accident Companies Bound by This Act.

Any corporation, association or society organized to insure against the contingency of death or physical disability of the assured thereunder resulting from accidental injuries, and which provides for the payment of policy claims, the accumulation of reserve or emergency funds and the expenses of the management and prosecution of the business by payments to be made, either at periods named in the contract or upon assessments as required by persons holding similar contracts, and where the assured's liability to contribute to the payment of benefits accrued or to accrue is not limited to a fixed sum, shall be deemed to be engaged in the business of accident insurance upon the assessment plan, and the business involving the issuance of such contracts shall be carried on in this state only by duly organized and authorized corpora-

tions, associations or societies, which shall be subject only to the provisions and requirements of this act. R. S. 1901, §4914j.

Elliott v. Monroe City, etc., Co., 76 Mo. App. 562.

134. Accident Reserve or Emergency Fund—How Used—How Invested.

Every such accident insurance corporation, association or society shall accumulate and maintain a reserve or emergency fund of at least two thousand dollars. Such fund, if not already accumulated, shall be accumulated by every such existing corporation, association or society within six months from the time this act takes effect, and by every corporation, association or society (organized) under this act within six months of the completion of its organization and the receipt of its certificate of authority to transact business in this state, and every corporation, association or society subject to the provisions of this act shall add to such emergency fund thereafter two and one-half per cent. of the amount realized from every premium, assessment or periodical call until such fund shall be equal to the amount of two dollars for every five thousand dollars of insurance in force. Such emergency fund, or any part thereof, may be used for the payment of death and indemnity claims: Provided, That if the amount of such fund be thereby reduced below the amount contemplated in this act, the amount by which such fund is reduced be made up and restored within six months thereafter. Such fund may be held in cash or invested in the same class of securities required by law for the investment of funds by insurance corporations, and nothing herein contained shall prevent the creation and accumulation of other funds in excess of the amount herein required to provide for the purposes of such corporation, association or society. R. S. 1901, §4914k.

In re Equitable, etc., Assn., 131 N. Y. 354; People v. Life, etc., Assn., 150 N. Y. 94.

See annotation to §13.

135. Annual Reports to Auditor of State—Form of—Penalty on Failure to Report.

Every such accident insurance corporation, association, or society doing business under this act shall, on or before the first day of March in each year make and file with the auditor of state a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which report shall be in lieu of all other reports required by the insurance law

of this state, [and] shall be verified by such officers of the corporation, association or society, as the auditor of state may require, and shall contain answers to the following questions:

First. Number of certificates of policies issued during the year or applicants admitted.

Second. Amount of death indemnity affected thereby.

Third. Number of death losses incurred.

Fourth. Number of death losses paid and amount thereof.

Fifth. Total number of indemnity claims paid and amount thereof.

Sixth. Number of death and number of indemnity claims unpaid.

Seventh. Does corporation, association or society charge annual dues or membership fees? If so, how much?

Eighth. Total amount received and whether from assessment, annual dues, membership fees, or other sources and the disposition thereof.

Ninth. Does corporation, association or society use moneys received for payment of claims to pay expenses, in whole or in part? And, if so, state the amount used:

Tenth. What is the amount of the emergency fund and how invested?

Eleventh. If organized under the laws of this state, state such fact and the date of organization.

Twelfth. Number of policies in force and death insurance in force at the beginning of the year, and such other information as may be required by the superintendent of insurance.

Any corporation, association or society refusing or neglecting to make such report, or to make payment of any one of the fees required by this act, shall, upon the order of the auditor of state, cease to do business in this state, until such report and payment shall be made and until the cost of such action be paid. R. S. 1901, §4914 l.

136. Reserve Fund Not Limited—May Deposit Securities with Auditor—Investment.

This act shall not be construed to limit the accumulation of a reserve or emergency fund by any corporation, association or society, subject to the provisions hereof. Any such corporation, association or society may, in its discretion, through its officers or directors, deposit with the auditor of state such securities and for such amounts as may be approved by him, and when so deposited,

shall be retained by him for the purposes herein described. All other investments of reserve funds shall be made in the same class of securities as are allowed by law for the investment of funds by insurance corporations. R. S. 1901, §4914m.

137. Policy and Payments Specified—Must Pay Maximum Sum—Duty of Auditor on Failure to Pay.

Every policy or certificate hereafter issued by any corporation, association or society, doing business under this act, and promising payment to be made upon a contingency death or physical disability, shall specify the sum of money which it promises to pay under such contingency, and the number of days after satisfactory proof of the happening thereof on which such payment shall be made. Upon the occurrence of such contingency, unless the contract shall have been avoided by fraud, or by breach of its conditions, the corporation, association or society shall be obligated to the beneficiary for such payment at the time and to the amount specified in the policy or certificate. If such corporation, association or society shall refuse or fail to make such payment for sixty days after final judgment has been obtained upon such claim, the auditor of state shall notify the corporation, association or society, not to issue any new policies of [or] certificates until such indebtedness is fully paid; and no officer or agent of the corporation, association or society, shall make, sign or issue any policy or certificate of insurance while such notice is in force. R. S. 1901, §4914n.

See sections 150 and 151 herein.

138. Reinsurance of Risks.

No such corporation, association or society, organized under the laws of this state, shall transfer its risks to, or reinsure them in any other corporation, association or society, unless the contract of transfer or reinsurance is first submitted to and approved by a two-thirds vote of a meeting of the insured, called to consider the same, of which meeting a written or printed notice shall be mailed to each member, certificate or policy-holder, at least thirty days before the day fixed for such meeting. If such transfer or reinsurance shall be approved, every member, certificate or policy-holder of the corporation, association or society, who shall file with the secretary thereof, within ten days after the meeting, a written notice of his preference to be transferred to some other corporation, association or society, than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of

such contract, had he been transferred to the corporation, association or society named therein. No such corporation, association or society, organized under the laws of this state, shall transfer its risks or assets, or any part thereof, to, or reinsure its risks, or any part thereof, in any insurance corporation, association or society of any other state or country which is not at the time of such transfer or reinsurance authorized to do business in this state under the laws thereof. R. S. 1901, §4914o.

139. Examinations by Auditor.

The auditor of state shall, at the request of any corporation, association or society, doing business under the provisions of this act in this state on the assessment plan, make an examination of such corporation, association or society, and shall furnish a certificate of the results of such examination, showing all its assets and how invested, and such other particulars as may be deemed necessary to show the character and condition of said corporation, association or society, and the necessary expense of said association [examination] shall be paid by the corporation, association or society requesting it. R. S. 1901, §4914p.

140. Books Open to Inspection—Corporation Insolvent—Auditor's Duty.

All corporations, associations and societies to which this act is applicable, with their books, papers and vouchers, shall be subject to visitation and inspection by the auditor of state, or such person as he may designate, at the expense of said association. The auditor of state may address any inquiries to such corporation, association or society, in relation to its doings or condition, or any other matter connected with its transactions relative to the business contemplated by this act. All officers of such corporation, association or society shall promptly reply in writing to all such inquiries under the oath of its president, secretary or other officers, if required. When the auditor of state on investigation, shall be satisfied that any corporation, association or society organized under the laws of this state, doing business in this state of the character defined in this act is insolvent because of matured death claims or other obligations due and unpaid, exceeding its assets and death assessments or periodical payments, called, or in process of collection, or has exceeded its powers, failed to comply with any provision of law, or is conducting business fraudulently; he shall report the facts to the attorney-general, who, if he shall be of the opinion that the facts require such action, may there-

upon apply to any court having jurisdiction thereof, within the county in which the principal office of such corporation, association or society in this state is located, for an order requiring the officers of such corporation, association or society, to show cause, at a reasonable time and place within such county, why such corporation, association or society should not be restrained from continuing to transact business; with power to the court to adjourn the hearing thereon from time to time, not exceeding sixty days in all. R. S. 1901, §4914q.

See annotation under §101.

141. Proceedings for Appointment of Receiver.

No order, judgment or decree providing for an accounting or enjoining, restraining or interfering with the prosecution of the business of any domestic insurance corporation, association or society, subject to the provisions of this act, or appointing a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the application of the attorney-general on his own motion, or after his approval of a request in writing thereof by the auditor of state, except in an action by a judgment-creditor or in proceedings supplementary to execution. R. S. 1901, §4914r.

Policy-holder can not maintain action. *Swan v. Mutual, etc., Assn.*, (N. Y.), 49 N. E. Rep. 258; *Fullenwider v. Supreme Council of Royal League* (Ill. App.), 30 Chicago L. N. 187. But see *Greef v. Equitable Life*, 57 N. Y. Supp. 871, 54 N. E. 712. See *Lowery v. State Life*, 153 Ind. 100.

142. Foreign Corporations, Admission—Duties of Auditor—Agreement with Foreign Corporation—Reciprocal Obligations.

Any corporation, association or society, organized under the authority of another state or government, to issue, or which is engaged in the business of issuing policies or certificates of life or accident, or life and accident, insurance, and for the payment of total and permanent disability claims to living members, on the assessment plan, as a condition precedent to transacting business in this state, shall deposit, with the auditor of state, a certified copy of its articles of incorporation or association, a certified copy of a vote or resolution of the board of directors of said company consenting that service of process in any suit against such company may be served upon the auditor of the state of Indiana, with like effect as if such company was chartered, organized, or incorporated in the state of Indiana, and agreeing that any process served upon such auditor

shall be of the same legal force and validity as if served upon said company, and agreeing that such service may be so made with such effect while any liability remains outstanding against such company in this state; a statement under oath of its president and secretary, in the form by the auditor of state required, of its business for the proceeding [preceding] year, a certificate, under oath of its president and secretary, that it is paying, and for the twelve months then next preceding, has paid the maximum amount named in its policies or certificate in full, a certificate from the proper authority in its home state; that corporations, associations or societies of this state, engaged according to the provisions of this act in life or accident or life and accident insurance and for the payment of total and permanent disability claims to living members upon the assessment plan, are legally entitled to do business in such state; a copy of its policy or certificate, application and by-laws, which must show that the insured's liability to contribute to the payments of benefits is not limited to the payment of a fixed periodical sum; evidence satisfactory to the auditor of state that the corporation, association or society, accumulates a fund equal in amount to that required of similar corporations, associations or societies of this state; that such accumulation is permitted by the law of the corporation, association or society and is for the benefit of policy or certificate-holders only, and is invested in securities authorized under the law of its incorporation or association. The auditor of state shall thereupon issue or renew the authority of such corporation, association or society to do business in this state, and such authority shall be revoked whenever the auditor of state, on investigation is satisfied that such corporation, association or society, is not paying the maximum amount named in its policies or certificates in full. Upon such revocation, the auditor of state shall cause notice thereof to be published in a newspaper of general circulation, published in the city of Indianapolis, Indiana, and no new business shall be thereafter done by its agents in this state. If any such corporation, association or society is authorized by the law under which it is incorporated to issue contracts of insurance not contemplated in this act, it shall, nevertheless, be permitted to transact in this state the character of business authorized by this act, upon complying in all other respects with the requirements thereof, and filing with the auditor of state an agreement duly executed by the proper officers, that such corporation, association or society will not enter into or issue within this state any contract of insurance,

policy or agreement not authorized by this act. Upon a breach of such agreement by any such corporation, association or society, the auditor of state shall forthwith revoke and cancel its authority to transact business in this state. When any other state or country shall impose any obligation upon any such corporation, associations or society of this state, the like obligations shall be imposed upon similar corporations, associations or societies, and their agents of such state or country doing business in this state. If the laws of such state where such corporation, association or society is organized will not admit corporations, association or societies organized in this state, or doing business under this act, to do business in such state, then such corporations, associations or societies shall not be admitted to do business in this state. R. S. 1901, §4914s.

See annotation under §267.

Reciprocal obligation is valid. Opinion of Attorney-General Michiner, 1888.

See annotation under §144.

143. Service of Process on Foreign Corporation—Auditor's Duty—Plaintiff to Pay Fee.

All processes in any action or proceeding against any foreign corporation, association or society doing business in this state under the provisions of this act, may be served upon the auditor of this state, and any lawful process against it which is served on the auditor of state shall be of the same legal force and validity as if served on the corporation, association or society, and this provision shall continue in force so long as any liability remains outstanding against the corporation, association or society in this state, service upon such auditor of state shall be deemed sufficient service upon the principal. When legal process against any such corporation, association or society is served upon such auditor of state, he shall immediately notify the corporation, association or society of such service by registered letter, prepaid, directed to its secretary; or, in case of a corporation, association or society of a foreign country to the resident manager, if any, in the [this] country; and shall within two days after such service, forward in the same manner a copy of the process served on him to such secretary or manager, or to any person previously designated by the corporation, association or society, in writing. The plaintiff in each process so served shall pay to the auditor of state at the time of such service a fee of two dollars, which shall be recovered by him as a part

of the taxable cost if he prevails in the suit. The auditor of state shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. R. S. 1901, §4914t.

See §§4916 and 4917, R. S. 1901. Also, see annotation under §275.

144. Penalty for False Statement in Application.

Any solicitor, agent, examining physician, applicant or other person who shall knowingly make any false or fraudulent representations in or with reference to any application for insurance, or for the purpose of obtaining any money or benefit in, or to any corporation, association or society transacting business under this act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than one year, or both, at the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate or policyholder in any such corporation, association, or society, for the purpose of procuring payment of a benefit named in the certificate or policy of such holder, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury. R. S. 1901, §4914u.

See *Commonwealth v. Duff*, 7 Pa. Dist. R. 37.

145. Right to Change Beneficiary.

Membership in any such corporation, association or society shall give to any member thereof the right, at any time, with the consent of such corporation, association or society, to make a change in his payee or payees, or beneficiary or beneficiaries, without requiring the consent of such payees or beneficiaries. R. S. 1901, §4914v.

Holland, etc., v. Taylor, 111 Ind. 121; *Isgrigg, etc., v. Schooley*, 125 Ind. 94. Also, see annotation under §157.

146. Benefits Not Liable to Attachment.

The money or benefit provided or rendered by any corporation, association or society, authorized to do business under this act, shall not be liable to attachment by garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, nor by any operation of law, to pay any

debt or liability of a policy or certificate-holder or any beneficiary named herein. R. S. 1901, §4914w.

This section is constitutional. *Burton v. Snyder* (Colo.), 43 Pac. Rep. 1004. *Contra, Skinner v. Holt*, 69 N. W. Rep. 595.

For construction of similar statutes in other states, see *Sulz, etc., v. Mutual, etc., Assn.*, 145 N. Y. 563; *Clark v. Lynch*, 31 N. Y. Supp. 1038; *Nims v. Ford*, 159 Mass. 575; *Commercial, etc., Assn. v. Newkirk*, 16 N. Y. Supp. 177; *Brown v. Balfour*, 46 Minn. 68. See annotations to §§157, 164. *Bull v. Ease*, 58 N. Y. Supp. 774; *Amberg v. Manhattan Life*, 67 N. Y. Supp. 872.

147. Penalties for Violations of This Act.

Any officer or agent of any such corporation, association or society, subject to any of the provisions of this act, who shall neglect or refuse to comply with any such provision, or who shall make in any report or statement any intentional false or fraudulent statement, or shall refuse to permit the auditor of state or any examiner duly authorized by him for the purpose, to make examination of its condition and business, books, papers and vouchers; and any person who shall act within this state as agent, solicitor or collector for any such corporation, association or society, which shall have failed, neglected or refused to comply with, or which has violated any of the provisions of this act, or shall have failed or neglected to procure from the auditor of state the certificate of authority to transact business in this state, required by law, shall forfeit to the state the sum of one hundred dollars for every such offense. If an examination of the condition and business of any such corporation, association or society transacting business in this state shall be prevented by any such refusal, the auditor of state shall revoke the certificate of authority issued to such corporation, association or society and it shall thereafter be unlawful for it to do business in this state until it shall have submitted to an examination, and the auditor of state shall have issued to it a new certificate of authority authorizing it to continue business in this state. R. S. 1901, §4914x.

148. Fees to Auditor.

The fees to be paid by each such corporation, association or society, to the auditor for the authority to such corporation, association or society, and its agents under the license granted by him to each corporation, association or society, to transact business in the state of Indiana shall be as follows: For filing copy of charter or articles of incorporation, twenty-five dollars; for filing each annual statement, twenty dollars; for issuing certificate of authority, or li-

cense to company, corporation, association or society, one dollar; for issuing license to each agent, one dollar; for affixing seal and certifying to any paper, one dollar; for renewal of license, each such corporation, association or society shall file with the auditor of state its annual statement, for which it shall pay the sum of twenty dollars; for issuing license to each agent, one dollar; for affixing seal and certifying any paper, one dollar: Provided, also, That when any other state or country shall impose any obligations in excess of those imposed by this act upon any such corporation, association or society of this state, a like obligation shall be imposed on similar corporations, and their agents, of such state or country doing business in this state: And provided also, That such corporation, association or society, in transacting business in this state shall be subject only to the provisions of this act. R. S. 1901, §4914y.

The fees herein provided must be paid by the auditor into the state treasury. Burns' Supp. 1897, §6422.

Retaliatory provision of this section is constitutional. *State v. Ins. Co. of N. A.*, 115 Ind. 257; *Blackmer v. Royal, etc., Co.*, 115 Ind. 291; *People v. Fire Assn. of Phila.*, 92 N. Y. 311.

149. Who Exempt from Provisions of This Act.

Nothing contained in §§1 to 25 (124 to 144 herein), both inclusive, of this act shall in any wise be construed to apply to secret or fraternal societies, lodges or councils, that are now organized, or that may hereafter be organized, which conduct their business and secure members on the lodge system exclusively, having ritualistic work and ceremonies in their societies, lodges or councils, and which are under the supervision of a grand or supreme body, nor to any association organized solely for benevolent purposes and not for profits; nor to any association of religious or secret societies, nor to any class of mechanics, express, telegraph or railroad employes or ex-Union soldiers or any existing societies now doing business and formed for the mutual benefit of the members thereof and thier families exclusively. R. S. 1901, §4914z.

For construction of similar laws in other states, see *State, etc., v. Miller, etc.*, 66 Iowa 26; *National Union v. Marlow*, 21 C. C. A. 89. Also, see annotation under §164.

150. Certificate to State Definite Amount.

That every policy or certificate hereafter issued by any insurance corporation of this state doing business on the assessment plan, or any insurance corporation of any other state authorized

to do an assessment insurance business in this state, and providing a payment to be made upon a contingency of death, sickness, disability or accident, shall specify the exact sum of money which it promises to pay upon each contingency insured against, and the number of days after satisfactory proof of the happening of such contingency at which such payment shall be made, and upon the occurrence of such contingency, unless the contract shall have been voided for fraud or breach of its conditions, the corporation shall be obligated to the beneficiary for such payment at the time and to the amount specified in the policy or certificate. Act March 11, 1901, p. 486.

151. Failure to Pay Policy in Full—Penalty—Exception.

Failure to pay the amount, whether in friendly settlement or by judgment of court, within thirty days of its adjudication, shall constitute a forfeiture of the right of the delinquent corporation to further continue in business in this state, in the case of an insurance corporation of another state; and in the case of an insurance corporation of this state, it shall be the duty of the auditor to state to report the facts to the attorney-general, who shall immediately bring suit to close up the business of the delinquent corporation: Provided, That nothing in this act shall be construed as affecting any organization doing business under the fraternal insurance laws of Indiana. Act March 11, 1901, p. 486.

CHAPTER VIII.

FRATERNAL BENEFICIARY ASSOCIATIONS.

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| <p>§152. Definition—Source of revenue — Beneficiaries — Exempt from insurance laws — Reserve or emergency fund.</p> <p>153. Existing corporations.</p> <p>154. Admission of foreign associations—Pay certificates in full—Table of rates—Examination—Conditions precedent.</p> <p>155. Annual reports — License — Report, form and contents — Additional inquiries.</p> <p>156. Auditor of state attorney for process—Duty of auditor—Service of process on domestic associations.</p> <p>157. License and fee.</p> <p>158. Examination by auditor—Expense.</p> <p>159. Organization — Approval by auditor — Fee—Certificate Articles, form and contents.</p> | <p>§160. Existing associations—Reincorporation—Manner of.</p> <p>161. Rights and powers.</p> <p>162. Shall not employ paid agents.</p> <p>163. Right of member to change beneficiary.</p> <p>164. Exemption from attachment — Exemption from taxation—Exception.</p> <p>165. Legislative body may meet outside of state.</p> <p>166. Application—Proof of claim — Penalty for fraud.</p> <p>167. Failure to make report, penalty — Injunction — Readmission—Condition precedent—Violating injunction, penalty.</p> <p>168. Doing business for unauthorized association, penalty.</p> <p>169. Retaliatory section.</p> <p>170. Associations exempted from provisions hereof.</p> |
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152. Definition—Sources of Revenue—Exempt from Insurance Laws—Reserve or Emergency Funds.

Sec. 1. That a fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on for the sole benefit of its members and their beneficiaries, and not for profit. Each association shall have a lodge system, with ritualistic form of work and representative form of government, and shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as the result of disease, accident or old age, provided the period of life at which the payment of physical disability benefits on account of old age commences shall not be under seventy (70) years. All subject to the compliance of its members with its constitution and by-laws. The fund from

which the expenses of such association shall be defrayed shall be derived from assessments or dues collected from its members. Payment of death benefits shall be to the families, heirs, blood relative, affianced husband or affianced wife of or to persons dependent upon the member. Such associations shall be governed by this act and shall be exempt from the provisions of the insurance laws of this state, and no law hereafter passed shall apply to them unless they be expressly designated therein. Any such fraternal beneficiary association may create, maintain, disburse and apply a reserve or emergency fund in accordance with its constitution or by-laws, and every such association shall be deemed and held to be a charitable institution. The term "fraternal beneficiary association," wherever used in this act, or in any other law of this state hereafter enacted, shall be construed to mean any association such as is defined in this section. As amended, Acts 1903, p. 18.

For leading article on amendments to by-laws as affecting the contract with members, see 37 Central Law Journal, 86.

For leading article on by-laws, see American Law Review (Nov., Dec., 1889), pp. 890, 923.

Designation of beneficiary controlled by statute, *Wallace v. Madden*, 48 N. E. Rep. 181. Also, see *Crocker v. Hogan*, 103 Iowa 243; *Kemp v. New York Produce Exchange*, 54 N. Y. Supp. 678; *Sternberg v. Levy*, 2 Mo. App. R. 49.

Association organized under this act can not do a regular life insurance business. *International, etc., Alliance v. State*, 86 Md. 550.

Provision restricting beneficiaries is not retrospective. *Wolpert v. Grand Lodge, etc.*, 2 Pa. Super. Ct. 564; *Delaney v. Delaney*, 175 Ill. 187.

Provision restricting beneficiaries does not apply to local branch of foreign association. *Hoffmeyer v. Muench*, 59 Mo. App. 20.

Stepson is a relative of his stepfather after his own mother is dead. *Simcoke v. Grand Lodge, etc.*, 84 Iowa 383.

See, also, *Bennett, etc., v. Van Riper, etc.*, 47 N. J. Eq. 563, and annotation to case in 14 L. R. A. 342.

153. Existing Corporations.

Sec. 2. All such associations coming within the description as set forth in section one (1) (152 herein) of this act, organized under the laws of this or any other state, territory or province, and now doing business within this state, may continue such business, provided they hereafter comply with the provisions of this act, regulating annual reports to the auditor of state and the designation of the auditor of state as a person upon whom legal process may be served, as hereinafter provided. R. S. 1901, §5050b.

**154. Admission of Foreign Association—Pay Certificates in Full
—Tables of Rates—Examination—Conditions Precedent.**

Sec. 3. Any such fraternal beneficiary association, within the description as set forth in Section one (1) (152 herein) of this act, organized under the laws of any other state, territory or province, and not now doing business within [this] state, shall be admitted to do business within this state, when it shall be shown to the satisfaction of the auditor of state that its charter or articles of association, and its by-laws provide for the conduct of its business in accordance with the provisions of this act; that it has at the time it applies for admission to do business within this state a sufficient number of members so that one assessment, or other stated payments in lieu of such assessment, upon such members, the amount of which assessment or other stated payment shall not exceed the amount previously provided by the laws of the order, shall be sufficient to pay in full the largest death loss the association might be called upon, under its laws to pay, and that it has paid in full all just benefits, claims of whatever nature incurred by it within the two two years last past: Provided, Such fraternal beneficiary association shall show that the mortuary assessment rates, provided for in whatever plan of business it has adopted are not lower than is indicated as necessary by the following mortality table:

<i>Age.</i>	<i>Number Living.</i>	<i>Number Dying.</i>	<i>Probability of Dying.</i>
20	100,000	500	.005000
21	99,500	501	.005035
22	98,999	502	.005071
23	98,497	503	.005107
24	97,994	505	.005153
25	97,489	507	.005201
26	96,982	510	.005259
27	96,472	513	.005318
28	95,959	517	.005388
29	95,442	522	.005469
30	94,920	527	.005552
31	94,393	533	.005647
32	93,860	540	.005753
33	93,320	548	.005872
34	92,772	557	.006004
35	92,215	567	.006149
36	91,648	578	.006307

<i>Age.</i>	<i>Number Living.</i>	<i>Number Dying.</i>	<i>Probability of Dying.</i>
37	91,070	591	.006490
38	90,479	606	.006698
39	89,873	622	.006921
40	89,251	640	.007171
41	88,611	660	.007448
42	87,951	683	.007766
43	87,268	708	.008113
44	86,560	734	.008480
45	85,826	761	.008867
46	85,065	790	.009287
47	84,275	822	.009754
48	83,453	857	.0102693
49	82,596	894	.0108238
50	81,702	935	.0114440
51	80,767	980	.0121337
52	79,786	1,029	.0128970
53	78,757	1,083	.0137511
54	77,674	1,140	.0146767
55	76,534	1,202	.0157054
56	75,332	1,270	.0168587
57	74,062	1,342	.0181200
58	72,720	1,418	.0194994
59	71,302	1,501	.0210513
60	69,801	1,588	.0227504
61	68,213	1,681	.0246434
62	66,532	1,778	.0267240
63	64,754	1,880	.0290330
64	62,874	1,985	.0315711
65	60,889	2,094	.0343904
66	58,795	2,206	.0375206
67	56,589	2,318	.0409620
68	54,271	2,430	.0447753
69	51,841	2,539	.0489767
70	49,302	2,645	.0536489
71	46,657	2,744	.0588122
72	43,913	2,832	.0644912
73	41,081	2,909	.0708113
74	38,172	2,969	.0777795
75	35,203	3,009	.0854757
76	32,194	3,026	.0939927

<i>Age.</i>	<i>Number Living.</i>	<i>Number Dying.</i>	<i>Probability of Dying.</i>
77	29,168	3,016	.1034010
78	26,152	2,977	.1138345
79	23,175	2,905	.1253506
80	20,270	2,799	.1385163
81	17,471	2,659	.1521951
82	14,812	2,485	.1677694
83	12,327	2,280	.1849599
84	10,047	2,050	.1855707
85	7,997	1,800	.2250844
86	6,197	1,539	.2483460
87	4,658	1,277	.2741520
88	3,381	1,023	.3025732
89	2,358	788	.3341815
90	1,570	579	.3687898
91	991	404	.4076690
92	587	264	.4497445
93	323	161	.4984520
94	162	89	.5493827
95	73	19	.6027397
96	29	19	.6551724
97	10	7	.7000000
98	3	3	1.0000000

And provided further, That before any such fraternal beneficiary association shall be authorized to do business in this state it shall file with the auditor of state a duly certified copy of its constitution or by-laws, certified to under oath by its secretary or similar officer and its chief executive officer, together with the appointment of the auditor of state as a person upon whom all legal process may be served as hereinafter provided; and it must also be shown that the said association is duly authorized to do business within the state, territory or province in which it is incorporated or organized, provided the laws of such state, territory or province provide for such authorization, but in case the laws of such state, territory or province do not provide for any such formal authorization for such association to do business, then such association shall be shown to be conducting its business in accordance with the provisions of this act; and to satisfy himself that such is the fact, the auditor of state may personally, or by some person designated by him, examine into the condition, affairs character and business methods, accounts, books and investments

of such association at its home office, which examination shall be at the expense of such association; but such expense shall not exceed ten dollars per diem in addition to the reasonable traveling expenses of the person making such examination: Provided, That the auditor of state may accept the examination made by the insurance department of the state, territory or province in which the home office of said association is located. Every provision of this section shall be considered a condition precedent for such association doing business within this state. As amended Acts 1901, p. 312. R. S. 1901, §5050c.

155. Annual Reports—License—Report, Form of and Contents—Additional Inquiries.

Sec. 4. Every such association doing business within this State, shall, on or before the first day of March of each year, make and file with the auditor of state of this state a report of its affairs and operation during the year ending on the thirty-first day of December immediately preceding, together with a certified copy of its laws, rules and regulations: Provided, That no such association organized under the laws of this state prior to the passage of this act, shall be required to make such report until it is two years old. If such association is found, upon examination of its reports and laws, to be doing business in accordance with the provisions of this act, the auditor of state shall issue it a license to do business within this state for one year, for which he shall charge a fee of five dollars(\$5). Such annual reports, which shall be in lieu of all other reports required by the auditor of state, shall be made on blank forms provided by the auditor of state, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association. This report, or the substance thereof, shall be published in the annual report of the auditor of state, in a part to be entitled "Fraternal Beneficiary Associations," and shall contain answers to the following questions, and any other information the auditor of state may require:

First. Number of certificates issued during the year or number of members admitted.

Second. Amount of indemnity effected thereby.

Third. Number of losses or benefit liabilities incurred.

Fourth. Number of losses or benefit liabilities paid.

Fifth. The amount received from each assessment during the year.

Sixth. Total amount paid members, beneficiaries, legal representatives or heirs.

Seventh. Number and kinds of claims for which assessments have been made.

Eighth. Number and kind of claims compromised or resisted, and brief statement of reasons.

Ninth. Does the association charge annual or other periodical dues or admission fees?

Tenth. How much on each one thousand dollars, annually or per capita, as the case may be?

Eleventh. Total amount received, from what source, and the disposition thereof.

Twelfth. Total amount of salaries paid to officers.

Thirteenth. Does the association guarantee, in its certificates, fixed amounts to be paid, regardless of amounts realized from assessments, dues, admission fees and donations?

Fourteenth. If so, state amount guaranteed, and the security for such guaranty.

Fifteenth. Has the association a reserve fund?

Sixteenth. If so, how is it created, what is its purpose, its amount, and how is it invested?

Seventeenth. Has the association more than one class?

Eighteenth. If so, how many and the amount of indemnity in each?

Nineteenth. Number of members in each class.

Twentieth. If it is a voluntary association, so state and give date of its organization.

Twenty-first. If organized under the laws of this state, under what law and at what time, giving year and date of the approval of the act?

Twenty-second. If organized under the laws of any other state, territory or province state such fact and the date of organization, with complete reference and designation of the law or laws under which organized.

Twenty-third. Number of certificates of beneficiary membership lapsed during the year.

Twenty-fourth. Number in force at the beginning and end of the year; if more than one class, the number in each class.

Twenty-fifth. Names and addresses of its president, secretary and treasurer or corresponding officers.

The auditor of state is authorized and empowered to address any additional inquiries to any such association in relation to its business or condition, or any other matter connected with its

transaction, relative to the business contemplated by this act, and such officers of such associations as the auditor of state may require shall promptly reply in writing, under oath, to all such inquiries. R. S. 1901, §5050d.

**156. Auditor of State Attorney for Process—Duty of Auditor—
Service of Process on Domestic Associations.**

Sec. 5. Every such association now doing or hereafter admitted to do business within this state, and not having its principal office within this state, and not being organized under the laws of this state, shall appoint in writing the auditor of state and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it must be served, and in such writing shall agree that any lawful process against it which is served on said auditor of state, shall be of the same legal force and validity as if served upon said association, and that the authority shall remain in force so long as any liability against such association remains outstanding within this state. Copies of such certificate, certified by said auditor of state, shall be deemed sufficient evidence thereof, and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such auditor of state shall be deemed sufficient service upon such association, provided that such process shall not be returnable until thirty days after such service. When legal process against any such association is served upon the said auditor of state, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall, within two days after such service, forward in the same manner a copy of the process served upon him to such officer. The plaintiff in the action upon which such process was issued shall pay to the auditor of state at the time of such service a fee of three dollars (\$3), which shall be recovered by said plaintiff as a part of his taxable costs, if he prevail in his said action. The auditor of state shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made and when the notice hereinbefore provided for was given to the officers of such association. In all suits in this state against any such association organized under the laws of this state, and having its principal office in this state, service shall be had only upon the chief executive officer or the secretary or corresponding officer of such association. R. S. 1901, §5050e.

See annotation under §302.

157. License and Fee.

Sec. 6. The auditor of state, upon the application of any fraternal beneficiary association having the right to do business within this state, as provided for in this act, shall issue to such association a permit in writing authorizing such association to do business within this state for one year from the date thereof, for which permit or certificate and all proceedings in connection therewith such association shall pay to the auditor of state a fee of five dollars (\$5). R. S. 1901, §5050f.

158. Examination by Auditor—Expense.

Sec. 7. The auditor of state, at the request of any such fraternal beneficiary association doing business under the provisions of this act in this state, shall make an examination of the books and accounts of such association, and shall furnish a certificate of the results of such examination, showing all of such association's assets and how invested, the condition of its business, its methods and such other particulars as may be deemed necessary to show the character and condition of the financial affairs of such association; and such association shall at all times be subject to such examination without any request being made by them. The necessary expense of this examination shall be paid by such association, but it shall not exceed ten dollars a day and the necessary traveling expenses of the person making the examination. R. S. 1901, §5050g.

159. Organization—Approval by Auditor—Fee—Certificate—Articles, Form and Contents.

Sec. 8. Any number of persons, citizens of the United States, not less than seven, five of whom shall also be citizens of the State of Indiana, hereafter desiring to form a fraternal beneficiary association, may associate themselves together and effect such organization in the manner provided in this section, and not otherwise. Articles of association shall be prepared in triplicate in the manner hereinafter provided and submitted to the auditor of state for his approval, together with the proposed literature, by-laws, rules and regulations governing such association and the proposed table of mortuary assessment rates under whatever plan of business it may have adopted, and that such rates are not lower than is indicated by the mortality table provided in amended section 3 of the above entitled act, and they shall not be approved by the said auditor if it shall appear that the name selected is the same, or so near the same, as that of any

other association or corporation then doing business within this state as to cause confusion in the minds of the people or to interfere with the rights of such existing association or corporation, or that the objects of the association are not in accordance with the provisions of this act, or of any other law or laws of this state applicable to such associations, or that the said articles of association do not conform to the provisions of this act in every particular; but in case none of these objections are found to exist, the said auditor of state shall endorse on the back of each copy of said articles of association the fact that he has approved them, together with the date of such action, all of which shall be signed by him with his official title: Provided, however, That before the said auditor of state shall approve any such articles of association it shall be shown to him by the sworn statement of one or more of the proposed incorporators that at least three hundred persons have signed, in good faith, applications for beneficiary membership in such proposed association and paid to the proper one of such proposed incorporators the amount of one death or mortuary collection, by whatever name it may be called, and that such money is deposited with some bank or trust company and held for the special purpose named. For this examination and approval of the articles of association herein mentioned, the auditor of state shall collect a fee of five (\$5) dollars. One copy of such articles of association, approved as hereinbefore provided, shall be filed with the secretary of state, whereupon the said secretary of state shall issue his certificate of incorporation and permanently attach the same by the seal of the state to another copy of the said articles of association, approved as hereinbefore provided, which copy shall be delivered to the incorporators of such association. The third approved copy of such articles of association shall be filed with the auditor of state. The articles of association hereinbefore mentioned shall be substantially in the following form:

First. The preamble shall name the incorporators and give the residence of each and the fact of their citizenship as herein required, and express their desire to incorporate a fraternal beneficiary association in accordance with and under the provisions of this act (designating this act so as to positively identify it).

Second. Article 1 shall give the name of the association.

Third. Article 2 shall state the location of the principal office of the association.

Fourth. Article 3 shall state the objects of the association and the plans by which these objects are to be carried out, including the extreme limit of the age of persons to whom benefit certificates may be issued, which limit of age shall not exceed fifty-five (55) years, and it shall also state the fact that all beneficiary members will be required to pass a medical examination such as is usually required by fraternal beneficiary associations.

Fifth. Article 4 shall state the name of the persons selected to manage the business or prudential affairs of the association for the first term, for which such persons are to be elected, and the manner of electing their successors, the title of all officers and the names of such officers with their residences, if they have been selected.

Sixth. Article 5 shall contain a description of the corporate seal adopted by such association, together with an impress of the same. These articles of association shall be signed and acknowledged by each of the incorporators. As amended, Acts 1901, p. 315. R. S. 1901, §5050h.

Right to corporate name, see annotation to §88.

Leading article on forfeiture of membership for non-payment of dues and assessments, 33 Central Law Journal, pp. 42, 65, 87.

160. Existing Associations, Reincorporation—Manner of.

Sec. 9. Any such fraternal beneficiary association that is now doing business in this state as a corporation de jure or a corporation de facto, by virtue of any law of this state authorizing the incorporation of such associations, may reincorporate under the provisions of this act, and receive from the secretary of state a certificate of reincorporation, which certificate shall also state the date of the original incorporation. Any such association desiring to reincorporate under this act shall, by its supreme governing body, council, executive committee or other body or committee having power to change its laws, adopt a resolution embodying new articles of association prepared to conform to section seven [eight] of this act, which resolution must be copied in triplicate, signed by the executive officer of the body adopting it, or by the chief executive officer of the association; and its correctness and the fact that it was adopted in accordance with the provisions of this section must be certified to under oath by the secretary or similar officer of such association. The aforesaid triplicate copies of such resolution shall then be submitted to the auditor of state for his approval, the same as if they were original articles of association, as provided in section seven [eight] (159 herein) of

this act, and one copy shall be filed with the said auditor of state and one copy with the secretary of state in the manner provided in section seven of this act for the incorporation of new associations; and when this is done, the secretary of state shall issue, in the manner provided in section seven of this act, his certificate of reincorporation; and thereafter such association shall be deemed to be reincorporated under the provisions of this act. R. S. 1901, §5050i.

Fee for reincorporation same as for original incorporation. Opinion Attorney-General Taylor, 1899.

161. Rights and Powers.

Sec. 10. Every such fraternal beneficiary association, from the time it files a copy of its articles of association for record in the office of the auditor of state and files a copy of the said articles of association with the secretary of state and receives his certificate of incorporation, as provided either in section seven [eight] (159 herein) or in section eight [nine] (159 herein) of this act, shall be deemed and held to be a corporation or body politic in perpetuity, and shall have and possess all the rights, powers and privileges given to corporations by common law; it may sue and be sued in any court of proper jurisdiction; it may borrow money and secure the payment of the same by notes and mortgages, bonds or deeds of trust upon its personal or real property; it may rent, lease, purchase, hold, sell and convey such real and personal property as may be necessary and proper for the purpose of erecting buildings for the use of such association and for other proper objects of such association, or which may be taken for debts due such association; and it may in general do all things not prohibited by law that are necessary and proper for the economical and proper conduct of its business. R. S. 1901, §5050j.

162. Shall Not Employ Paid Agents.

Sec. 11. Such association shall not employ paid agents in soliciting or procuring members, except in the organization or building up of subordinate bodies or granting members inducements to procure new members. R. S. 1901, §5050k.

163. Right of Member to Change Beneficiary.

Sec. 12. No contract between a member and his beneficiary, that the beneficiary, or any other person for him shall pay such member's assessments and dues, or either of them, shall give the beneficiary or other person a vested right in the benefit certificate or in the benefit, or deprive the member of the right to change the

name of the beneficiary, or revoke the certificate, if any, issued by such association: Provided, That such change or revocation to be made by written or printed notice to the association in the manner and form provided for by its by-laws. R. S. 1901, §50501.

For construction, see *Fischer v. Fischer*, 99 Tenn. 629, and annotation to said case in 45 Central Law Journal 491; also annotation to *Grand Lodge v. Noll*, 15 L. R. A. 350.

Also, see *Bilbro v. Jones*, 28 S. E. Rep. 118; *John Hancock, etc., Co. v. White*, 40 Atl. Rep. 5; *Tilman v. Insurance Company*, 27 App. Div. 392; *Supreme Council v. Tracy*, 169 Ill. 123; *Lane v. Lane*, 99 Tenn. 639; *Masonic, etc., Assn. v. Coles*, 70 Conn. 537; *Offil v. Supreme Lodge*, 46 S. W. Rep. 768; *Collins v. Collins*, 30 App. Div. 341; *Hofman v. Grand Lodge*, 1 Mo. App. R. 5; *Grand Lodge v. Renald*, 1 Mo. App. R. 444; *Delaney v. Delaney*, 70 Ill. App. 130, 51 N. E. Rep. 961, 175 Ill. 187; *Moan v. Normile*, 56 N. Y. Supp. 339.

164. Exemption from Attachment—Exemption from Taxation—Exception.

Sec. 13. The money, or other benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under this act shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in any certificate or any person who may have any right thereunder. And the buildings and other property used by said association in carrying on its business, and all dues, assessments and other payments and the accumulations thereof, held and possessed by said association for the payment of death, sick or disability benefits, and the reserve, emergency and other mortuary funds of said association shall be exempt from taxation for state, county and municipal purposes: Provided, That nothing in this act shall be construed to exempt from taxation any real estate owned by any association incorporated or doing business under the provisions of this act, except such as is occupied exclusively by such association in carrying on its business. As amended, Acts 1903, p. 19.

As to right to exempt property from taxation, see section 1, article 10, Constitution of Indiana. Also annotation to case of *Hogg v. Mackay*, 19 L. R. A. 77.

Right to attach proceeds of certificate after payment to beneficiary. *Reighart v. Harris*, 51 Pac. Rep. 788.

Also, see *Wright v. Wright*, 100 Tenn. 313; *Burton v. Snyder*, 43 Pac. Rep. 1004; *Lake v. Minnesota, etc., Assn.*, 63 N. W. Rep. 261; *Larrabee v. Palmer*, 70 N. W. Rep. 100; *Murdy v. Skyles*, 70 N. W. Rep. 714; *How v.*

How, 63 N. W. Rep. 627; Clark v. Lynch, 31 N. Y. Supp. 1038; Crumley v. Fuller, 57 Pac. 47; Grand Lodge v. Dister, 2 Mo. App. R. 71; Skinner v. Holt, 69 N. W. 595; Sulz v. Mutual, etc., Assn., 145 N. Y. 563; Nims v. Ford, 159 Mass. 575; Commercial-Assn. v. Newkirk, 16 N. Y. Supp. 177; Brown v. Balfour, 46 Minn. 68; Bull v. East, 58 N. Y. Supp. 774; Amburg v. Manhattan Life, 67 N. Y. Supp. 872.

165. Legislative Body May Meet Outside of State.

Sec. 14. Any such fraternal beneficiary association organized under the laws of this state may provide for the meetings of its legislative or governing body in any other state, territory or province, wherein such association shall have subordinate lodges or bodies, and all business or corporate acts transacted at such meetings shall be valid in all respects as if such meetings were held in this state; and where the laws of any such associations provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast by its subordinate bodies in any other state, territory or province shall be valid as if cast in this state. R. S. 1901, §5050n.

See Bastian v. Modern, etc., 166 Ill. 505; Head Camp v. Woods (Cal.), 81 Pac. Rep. 261.

166. Application—Proof of Claim—Penalty for Fraud.

Sec. 15. Any person, officer, member or examining physician who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under this act, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100, nor more than \$500, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make any false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder or member of any such association, for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath, required or authorized by this act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury. R. S. 1901, §5050o.

For a case in which physician was convicted for falsely certifying that he had made medical examination of applicant, see Commonwealth v. Duff, 7 Pa. Dist. R. 37.

167. Failure to Make Report, Penalty—Injunction—Readmission—Condition Precedent—Violating Injunction, Penalty.

Sec. 16. Any such association, whether heretofore or hereafter organized under the laws of this state or of any other state, territory or province, refusing or neglecting to make the report provided for in this act, shall be excluded from doing business within this state. The auditor of state, within sixty days after such association shall exceed its powers or shall conduct its business fraudulently, or shall be insolvent, or shall fail to comply with any of the provisions of this act, must give notice thereof in writing to the attorney-general, who shall immediately commence an action against such association to enjoin it from carrying on any business within this state, or if found to be insolvent, for the appointment of a receiver to wind up its affairs. No injunction against any such association to enjoin it from transacting business in this state, or order appointing a receiver therefor, shall be granted by any court except on application of the attorney-general at the request of the auditor of state, where the state, or a member, or other party, seeks relief. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violations of the law complained of shall be corrected, nor until the costs of such action shall be paid by it, provided the court shall find that such association was in default as charged, and that such association is solvent. Whereupon the auditor of state shall reinstate such association and not until then shall such association be again allowed to do business within this state. Any officer, agent, or person acting for any such association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business, pursuant to this act, or after received has been appointed for such association, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than twenty-five (\$25) dollars nor more than two hundred (\$200) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than one year, or by both such fine and imprisonment in the discretion of the court. As amended, Acts 1901, p. 312, R. S. 1901, §5050p.

Right of member to bring suit, see annotation under §104.

168. Penalty for Doing Business for Unauthorized Associations.

Sec. 17. Any person who shall act within this state as an offi-

cer, agent or otherwise for any association which shall have failed, neglected or refused to comply with, or shall have violated any of the provisions of, this act, or shall have failed or neglected to procure from the auditor of state a proper certificate of authority to transact business as provided for by this act, shall be subjected to the penalty provided in the last preceding section for the misdemeanor therein specified. R. S. 1901, §5050q.

169. Retaliatory Section.

Sec. 18. When any other state, territory or province shall impose any obligation upon any fraternal beneficiary association organized under the laws of this state, or its agents or representatives, or other persons transacting business for it in such other state, territory or province, the like obligations are hereby imposed on similar fraternal beneficiary associations organized under the laws of such other state, territory or province, and their agents or representatives doing business in this state. R. S. 1901, §5050r.

See annotation under §300.

170. Associations Exempted from Provisions Hereof.

Sec. 19. This act shall not apply to any corporation, society or association carrying on the business of life, health, casualty or accident insurance for profit or gain, but it shall apply only to fraternal beneficiary associations as defined in section one of this act; this act shall not affect or apply to any grand or subordinate lodge of the Ancient Order of Free and Accepted Masons, Independent Order of Odd Fellows, Improved Order of Red Men, or Knights of Pythias, as they now exist, nor to similar orders or secret societies, nor to any association not working on the lodge system, or which limits its certificate holders to a particular class, or to the employes of a particular town or city, designated firm, business house or corporation. R. S. 1901, §5050s.

The following named associations were held, in cases cited, not to be controlled by the law of insurance. In some of them this was held on account of a statute exempting such associations: Ancient Order of United Workmen: *Titsworth v. Titsworth*, 40 Kans. 571; *Dickinson v. A. O. U. W.*, 159 Pa. 258; *Johnson v. Railroad*, 163 Pa. 127. Burlington Voluntary Relief Association: *Donald v. C., B. & Q. R. Co.*, 93 Iowa 284. Central Ohio Mutual Relief Association: *State v. Association*, 29 Ohio St. 399; *Central Verein v. Hermann's Soehne*: *Durian v. Central*, etc., 7 Daly 168. Commonwealth Benevolent Association: *State v. Taylor*, 50 N. J. L. 49. Equitable Beneficial Association: *Commonwealth v. Association*, 137 Pa. 412. Federal Investment Company: *State v. Company*, 48 Minn. 110.

Grand Council Northwestern Legion of Honor: *Knudson v. Grand Council*, 7 S. D. 214. Grand Grove Ancient Order of United Druids: *Barbaro v. Occidental*, etc., 4 Mo. App. 429. Grand Lodge Iowa Legion of Honor: *Lamont v. Grand Lodge*, 31 Fed. Rep. 177. Iowa Mutual Association: *State v. Association*, 15 Iowa 25. Legion of Honor: *Equitable*, etc., Co. v. *Hazlewood*, 75 Tex. 338. Masonic Benevolent Association: *Association v. Bunch*, 109 Mo. 560. Masonic Mutual Association of Cleveland: *Association v. Jones*, 154 Pa. 107. Northwestern Masonic Aid Association: *Association v. Jones*, 154 Pa. 99. Mutual Protection Association: *State v. Association*, 26 Ohio St. 19. National Accident Soc.: *State v. National Acc. Soc.*, 79 N. W. 220. National Mutual Aid Association: *Commonwealth v. Association*, 94 Pa. 481. National Mutual Benevolent Association: *State v. Whitmore*, 75 Wis. 332. New England Mutual Aid Society: *Briggs v. Earl*, 139 Mass. 473. Northwestern Life Association: *Association v. Stout*, 32 Ill. App. 31. People's Mutual Benefit Association: *White v. National*, etc., Co., 30 Ohio L. J. 237. Order of Railway Conductors of America: *Order v. Koster*, 55 Mo. App. 186. Royal Arcanum: *Holland v. Taylor*, 111 Ind. 121. San Francisco Stock and Exchange Board: *Swift v. Board*, 67 Cal. 557. Supreme Council Order of Chosen Friends: *Supreme Council v. Fairman*, 62 How. Pr. 386. Supreme Lodge Shield of Honor: *Donlevy v. Supreme Lodge*, 1 Pa. Dist. R. 213. Supreme Sitting Order of Iron Hall: *Fawcett v. Supreme Sitting*, 64 Conn. 170; *McAlees v. Supreme Sitting* (Pa.), 12 Cent. Rep. 415. Supreme Tent of the Knights of the Maccabees: *Lithgow v. Supreme Tent*, 165 Pa. 292.

In the following cases the associations named were treated as insurance companies or their certificates controlled by the insurance laws: American Legion of Honor: *Splawn v. Chew*, 60 Tex. 532. Ancient Order of United Workmen: *Chartrand v. Brace*, 16 Colo. 19; *State v. Nichols*, 78 Iowa 747; *State v. Miller*, 66 Iowa 26; *Daniher v. Grand Lodge*, 10 Utah 110. Bankers' Life Association: *Brown v. Balfour*, 46 Minn. 68. Bankers' and Merchants' Mutual Benefit Association: *State v. Association*, 23 Kan. 499. Buffalo Life and Reserve Association: *McCollum v. Mutual*, etc., Co., 55 Hun 103. Citizens' Benefit Association of St. Louis: *State v. Association*, 6 Mo. App. 163. Citizens' Mutual Relief Society of Portland: *Swett v. Society*, 78 Me. 541. Connecticut Mutual Benefit Company: *Commonwealth v. Weatherbee*, 105 Mass. 149. Covenant Mutual Benefit Association: *State v. Root*, 83 Wis. 667; *Association v. Baldwin*, 49 Ill. App. 203. Endowment Benevolent Association of Kansas: *Association v. State*, 35 Kan. 253. Equitable Aid Union: *Fisk v. Equitable Aid Union*, 20 W. N. C. 290. Expressmen's Aid Society: *Society v. Lewis*, 9 Mo. App. 412. Farmers' and Mechanics' Mutual Benefit Association: *State v. Association*, 18 Neb. 276. Fidelity Mutual Aid Association: *State v. Moore*, 38 Ohio St. 7. Franklin Beneficial Association: *Association v. Commonwealth*, 10 Pa. 357. Fraternal Alliance: *Rensenhouse v. Seeley*, 72 Mich. 603. Golden Rule: *Golden Rule v. People*, 118 Ill. 492. Grand Lodge of the United Order of Druids: *Schunck v. Gegenseitiger Wittwen und Waisen Fond*, 44 Wis. 369. Granite Mutual Aid Association: *Granite State*, etc., *Association v. Porter*, 58 Vt. 581. Independent Order of B'nai B'rith: *Goodman v. Jedidjah Lodge No. 7*, etc., 67 Md. 117. International Fraternal Alliance: *Order of International Fraternal Alliance v. State*, 77 Md. 547.

Kentucky Mutual Security Fund Company: *Company v. Logan*, 90 Ky. 364. Keystone Benefit Association: *Commissioners v. Keystone, etc., Association*, 171 Pa. 465. Masonic Aid Association of Dakota: *Association v. Taylor*, 2 S. D. 324. Masonic Mutual Benevolent Association of Texas: *Farmer v. State*, 69 Tex. 561. Masonic Mutual Benefit Society of Kansas: *Olmstead v. Society*, 37 Kan. 93. Mason's Benevolent Association: Illinois, etc., *Society v. Winthrop*, 85 Ill. 537. Canton Masonic Benevolent Association: *Rockhold v. Society*, 129 Ill. 440. Central St. Louis Masonic Hall Association: *State v. Association*, 14 Mo. App. 597. Kenebec Masonic Mutual Association: *Bolton v. Bolton*, 73 Me. 299, subd. 3. Knights Templars' and Masons' Life Indemnity Co.: *Perry v. Company*, 46 Fed. Rep. 439. Minnesota Masonic Relief Association: *Lake v. Association*, 61 Minn. 96. Supreme Lodge Knights of Pythias: *Bauer v. Samson Lodge, etc.*, 102 Ind. 262, 48 S. W. Rep. (Mo.) 936. Massachusetts Benefit Association: *Hanford v. Association*, 122 Mo. 50. Merchants' Exchange Mutual Benefit Society: *State v. Society*, 72 Mo. 146. Michigan Mutual Benefit Association: *Miner v. Association*, 63 Mich. 338. Mutual Accident and Life Association of Pennsylvania: *Association v. Kayser*, 14 W. N. C. 86. A "Mutual Benefit Association": *Foster v. Moulton*, 35 Minn. 458. Mutual Insurance Company, Order of Hermann's Sons: *Erdmann v. Company*, 44 Wis. 376. Mutual Benefit Life Insurance Co. of Hartford: *Company v. Marye*, 85 Va. 643. Mutual Reliance Society: *Massey v. Society*, 102 N. Y. 523. Mutual Reserve Fund Life Association: *Sherman v. Commonwealth*, 82 Ky. 102. National Association of the Farmers' and Mechanics' Mutual Aid Association: *State v. Association*, 35 Kan. 51. National Benefit Association: *Kemp v. Good Templars', etc., Association*, 46 N. Y. S. R. 429. National Indemnity and Endowment Co.: *In re National, etc., Co.*, 142 Pa. 450. National Mutual Aid Society: *Society v. Lupold*, 101 Pa. 111. Newbold Friendly Society: *Society v. Barlow* (1893), 2 Q. B. 128. Northwestern Benevolent and Mutual Aid Association: *Association v. Wanner*, 2 Ill. App. 357. Northwestern Mutual Live-Stock Association: *State v. Association*, 16 Neb. 549. Odd Fellows' Mutual Benefit Society: *Walter v. Hensel*, 42 Minn. 204. Odd Fellows' Relief Association of the Connecticut River Valley: *Smith v. Bullard*, 61 N. H. 381. Minnesota Odd Fellows' Mutual Benefit Society: *Walter v. Hensel*, 42 Minn. 204. Order of Chosen Friends: *Supreme Counsel v. Forsinger*, 152 Ind. 52. Order of Pente: *Stambler v. Order of Pente*, 150 Pa. 492. Order of Vesta: 2 Penn. Dist. Rep. 254. Order of Railway Conductors of America: *Dixon v. Order*, 49 Fed. Rep. 910. Railroad Conductors' Benefit Association: *Association v. Robinson*, 147 Ill. 138. Presbyterian Mutual Fund: *Fund v. Allen*, 106 Ind. 593. Provident Mutual Relief Association: *Barton v. Association*, 63 N. H. 535. Rochester Mutual Aid and Accident Association: *McCollum v. Mutual, etc., Co.*, 55 Hun 103. Royal Arcanum: *State v. Benton*, 35 Neb. 463. Senate of the National Union: *National Union v. Marlow*, 40 U. S. App. 95. Single Men's Endowment Association of Minnesota: *State v. Trubey*, 37 Minn. 97; *State v. Critchett*, 37 Minn. 13. Standard Life Association: *State v. Association*, 38 Ohio St. 281. Supreme Commandery Knights of the Golden Rule: *Supreme Commandery v. Ainsworth*, 71 Ala. 436. Supreme Council American Legion of Honor: *Supreme Council v. Larmour*, 81 Texas 71. Supreme Lodge, etc., Golden Lion: *Fogg v. Su-*

preme Lodge, 156 Mass. 431. Supreme Lodge Knights and Ladies of Honor: Numrich v. Supreme Lodge, 24 N. Y. S. R. 287. Supreme Lodge Knights of Honor of the World: Tennessee Lodge No. 20, etc., v. Ladd. 5 Lea 716. Texas Benevolent Association: McCorkle v. Association, 71 Texas 149. Valley Mutual Insurance Association: Block v. Association, 52 Ark 201. Vigilant Insurance Company of Nimrod: State v. Company, 30 Kan. 585.

Also, see Grimes v. Northwestern Legion of Honor, 64 N. W. Rep. 804.

CHAPTER IX.

VOLUNTARY ASSOCIATIONS.

Lodges and Other Bodies of Masonic, etc., Associations, and Title Insurance Companies.

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[Approved March 9, 1901.]

171. Articles of Association.

Sec. 1. That any number of persons, not less than three (3), may voluntarily associate themselves by written articles of association, signed and acknowledged by each person who may be a member at the time of organization, specifying:

First. The corporate name of such association, which shall not be the same or similar to the name of any other association incorporated in this state.

Second. The amount of the capital stock of the same, if such association is organized for pecuniary profit, and the number of shares (if any) into which the same shall be divided, with the amount of each share, which shall not exceed one hundred dollars (\$100).

Third. The object of such association, with the proposed plan of doing business fully set out.

Fourth. The names and places of residence of each incorporating member.

Fifth. The principal place of business of such association.

Sixth. The term of existence of such association, which, if organized for pecuniary profit, shall not exceed fifty (50) years.

Seventh. A description of the corporate seal; and

Eighth. The manner of election or appointment of all directors and officers who are to manage the business and prudential concerns of any such association.

Ninth. The number of trustees, directors or managers who shall manage the affairs of the association, together with the names of those who shall manage such affairs for the first year. R. S. 1901, §4583.

172. Purposes of Association—Lodges of Masons, Etc.

Sec. 2. That such associations may be formed for one only of the following purposes:

Sec. 7. To organize lodges of other bodies of Masons, Odd Fellows, Knights of Pythias, Uniform Rank Knights of Pythias, Ancient Order United Workmen, Benevolent Order Elks, Knights of Honor and Knights and Ladies of Honor, Royal Arcanum, Continental Fraternal Union, or the National Union, or other secret ritualistic orders, according to their respective laws; also divisions or associations of temperance or other charitable associations or organizations. R. S. 1901, §§4584-4589.

When treated as mutual insurance company. Opinion Attorney-General Hord, 1884. See annotation to §170.

173. Title Insurance.

Sec. 18. To organize companies for the purpose of carrying on the business of insuring titles to real estate, and to make abstracts, loans and collections in connection therewith; in the manner to be fully stated in such articles. R. S. 1901, §4595e.

174. Articles of Incorporation Presented to Secretary of State—Recording.

Sec. 27. That such incorporating members of such association shall first present their articles of association to the secretary of state of the state of Indiana for filing; and at the time of presenting said articles (and before presenting the same for filing to the recorder of the county in which the same is organized) they shall

also present therewith full written or printed statements of the proposed plan of doing business; and if, upon examination, said secretary of state shall find said articles to be according to law, and its proposed plan of doing business not inconsistent with the existing laws of the state of Indiana, or of the United States, and upon the payment of the fees prescribed by law, he shall issue to such corporation a certificate of incorporation, which shall be prima facie evidence of such incorporation. Every such association, after such articles have been so approved by the secretary of state, shall file a duplicate of its articles in the recorder's office of the county in which the principal place of business of such association is located, and upon the expense of filing and recording being paid such recorder shall record the same in the miscellaneous book of records in his office, and such record or a certified copy thereof shall be conclusive evidence of the matters and things therein stated. R. S. 1901, §4595n.

Interment associations can not incorporate under this law unless on lodge system. Opinion Attorney-General Taylor, January 7, 1901.

175. Powers.

Sec. 28. Every such association, from the time such certificate is issued by the secretary of state and such articles are recorded in the recorder's office, shall be deemed and held to be a corporation, and shall have and possess all the rights, powers and privileges given to corporations by common law, to sue and be sued, to borrow money and secure the payment of the same by notes and mortgages, bonds or deeds of trust upon their personal and real property, and rent, lease, purchase, hold, sell and convey such real and personal property as may be necessary and proper for the purpose of erecting buildings and for other necessary objects of any such corporation. R. S. 1901, §4595o.

176. Duties of Auditor of State—Receiver.

Sec. 29. That such association, at the time of filing its said articles with the secretary of state, shall likewise file a copy thereof in the office of the auditor of state of the state of Indiana, and shall also file in the office of the auditor of state, from time to time, written or printed copies of its constitution and all by-laws thereafter adopted; and said auditor of state shall have power to examine any such association at any time, and if upon any such examination said auditor of state shall find that any such association is doing a business not authorized by law, he shall notify such association to cease doing such unauthorized

business, and such association shall at once cease doing such unauthorized business; and if such association shall fail or refuse to cease doing such unauthorized business, or shall be insolvent, then in either such event the auditor of state shall notify the attorney-general of the result of such examination and condition, and the attorney-general shall thereupon be authorized to institute proceedings for injunction, for a receiver or for a judgment of ouster by proceedings in quo warranto, or for sequestration of property, or such other legal proceedings as may be necessary or proper in the premises. R. S. 1901, §4595p.

177. Capital Stock—Increase or Decrease.

Sec. 30. That every such association may designate the manner in which its shares of stock (if any) may be held, sold, conveyed, assigned or transferred. Any voluntary association heretofore or hereafter organized under the laws of the state of Indiana for any of the purposes set out in this act may increase or decrease its capital stock at any annual meeting of the stockholders: Provided, That written or printed notice of such proposed increase or decrease shall be given by the secretary of the association to its stockholders by depositing such notices in the mail at least ten (10) days before such annual meeting, addressed to their last named place of residence: And provided, further, That any such association heretofore or hereafter organized may increase its capital stock at any special meeting of the stockholders by a vote representing a majority of all the outstanding stock of such association; such special meeting to be called for that purpose: Provided, Written or printed notice of such proposed change, signed by the secretary of the company, shall be deposited in the mail addressed to each of the stockholders of such association at least ten (10) days before such special meeting, at their last known place of residence. R. S. 1901, §4595q.

178. Election of Officers—Books—Evidence.

Sec. 31. Every such association shall elect such officers or agents as may be necessary to carry into operation the objects of its organization. It may prescribe and adopt rules and regulations for the direction of its officers and members; and such corporation shall keep a fair record of its proceedings and accounts in proper books, and such records, or copies thereof, duly attested by the secretary or clerk under its corporate seal, may be given and read in evidence in any court of this state. R. S. 1901, §4595r.

179. May Be Named as Legatee.

Sec. 32. Any property, real or personal, may be bequeathed, devised or given to any such corporation by will; and in such cases, it shall be sufficient if the corporate name be used or the purpose so described as not to admit of a reasonable doubt for what corporation or purpose the same was intended to be devised or given. R. S. 1901, §4595s.

180. Dissolution—Receiver.

Sec. 33. Whenever two-thirds in interest of the members of any such corporation heretofore or hereafter organized, desire to close its concerns, they may apply by petition to the circuit or superior court of the county in which the principal office or place of business of such company is located, setting forth, in substance, the grounds of their application, with the names and amounts of all stockholders, and the names and amounts due all creditors; and the court shall thereupon direct that notice for ten (10) days shall be mailed to the last and usual place of residence of each stockholder and creditor, and fix a day in such notice for a hearing of such application for dissolution; and the court, after such notice and a hearing, may decree a dissolution of such corporation and appoint a trustee or receiver or receivers to wind up its affairs, take charge of its estate and effects, to collect debts and property due and belonging to such corporation, with power to prosecute and defend suits in its name or otherwise, to appoint agents under such receiver or receivers, and to do all other acts which might be done by such corporation that are necessary for the final settlement of its unfinished business. The powers of such receiver or receivers may continue as long as the court deems necessary for said purposes. R. S. 1901, §4595t.

181. Jurisdiction of Court.

Sec. 34. The court shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and may make such orders, injunctions and decrees and judgments therein as justice and equity may require. R. S. 1901, §4595u.

182. Duty of Receiver.

Sec. 35. The receiver shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor, and if not, they shall distribute the same ratably among the creditors who prove their debts in a manner directed by any order or decree of the court for that purpose. If there is a balance remaining

after the payments of the debts, the receiver shall distribute and pay it to and among those who are justly entitled thereto as having been stockholders or members of the corporation, or their legal representatives. R. S. 1901, §4595v.

183. Final Order for Dissolution—Duty of Clerk of Court.

Sec. 36. When the business of such corporation shall have been closed up, then the court may order and decree a final dissolution of the corporation, and the clerk of the court for the county in which the decree or order for dissolution is made shall forthwith make such return thereof to the secretary of state, giving the name of the corporation dissolved, and the date upon which such order or decree was made, and the secretary of state shall make a memorandum thereof upon the records in his office. R. S. 1901, §4595w.

184. Right to Amend or Repeal.

Sec. 37. This act may be repealed or amended at the discretion of the legislature. R. S. 1901, §4595x.

185. Laws Repealed.

Sec. 38. All laws and parts of laws in conflict with this act are hereby repealed; and the following acts upon the same subject-matter are hereby expressly repealed, to wit:

The act approved February 20, 1867, published on page 223 of the acts of the General Assembly for that year.

The act approved December 20, 1872, published on page 135 of the acts of the General Assembly for that year.

The act approved March 26, 1881, published on page 712 of the acts of the General Assembly for that year.

The act approved April 16, 1881, published on page 715 of the acts of the General Assembly for that year.

The act approved April 8, 1885, published on page 145 of the acts of the General Assembly for that year.

The act approved March 7, 1887, published on page 41 of the acts of the General Assembly for that year.

The act approved March 6, 1889, published on page 144 of the acts of the General Assembly for that year.

The act approved March 9, 1891, published on page 370 of the acts of the General Assembly for that year.

The act approved March 9, 1891, published on page 385 of the acts of the General Assembly for that year.

The act approved March 3, 1893, published on page 289 of the acts of the General Assembly for that year.

The act approved March 5, 1895, published on page 99 of the acts of the General Assembly for that year.

The act approved March 8, 1895, published on page 168 of the acts of the General Assembly for that year. R. S. 1901, §4595y.

186. Rights of Existing Corporations.

Sec. 39. That all corporations organized under either of the laws hereby repealed which would have been legally incorporated if said acts had been valid are hereby validated and legalized, are hereby continued in their respective rights, as fixed by the law under which the same was incorporated, and are hereby authorized to operate under the provisions of this act, or under the provisions of the law pursuant to which any such association is organized: Provided, That the right of the auditor of state to supervise and examine any such association and of the attorney-general to institute the proceedings in this act provided for shall be held to apply to all such corporations heretofore, as well as to all such corporations hereafter organized. R. S. 1901, §4595z.

187. When Benefits Exempt from Creditors' Claims.

All benefits, claims or interests on account of certificates of membership, policies or other evidences of interest in any Masonic, Odd Fellow or other benevolent or charitable association, society or incorporation, organized and incorporated under the laws of this state, shall be exempt from all claims of creditors, all judgments, and all other claims against the holder of such certificate, policy or other evidence of interest. All such benefits, claims or interests, made for the benefit and protection of the wife, child or children, or dependents of parties so insured, or members of such societies so organized and incorporated, shall be for the sole use and benefit of the parties named as beneficiaries or payees in the policy or certificate of membership issued by such society, association or incorporation: Provided, Such association, society or incorporation is organized for the purpose of mutual benefit, for benevolent or charitable purposes, or for the purpose of mutual life insurance: And provided, Such benefits, claims or interests are made in favor of the wife, child or children, or other dependents of the holder of such certificate, policy or evidence of interest: And, provided further, That nothing in this act shall be construed to affect the rights of creditors in any policy of life insurance, where the insured shall have died previous to the taking effect of this act. R. S. 1901, §5048.

This section only applies to corporations organized under the laws of this state. *Presbyterian Fund v. Allen*, 106 Ind. 593.

Persons named as beneficiaries in certificates have no vested rights therein until the death of the member holding the certificate. *Masonic Society v. Burkhart*, 110 Ind. 189; *Milner v. Bowman*, 119 Ind. 448.

Also, see *Wright v. Wright*, 100 Tenn. 313.

Also, see annotation under §164.

188. Venue of Actions—Service of Process.

All suits on account of benefits, claims or interest against societies, associations or incorporations named in the preceding section, shall be brought, either in the county where the principal office of such society, association or incorporation is located, or in the county in which is located the local or subordinate branch or lodge of such society, association or incorporation, of which the person to whom such certificate of membership, policy or other evidence of interest was issued was a member at the time of his death or when the cause of action accrued. And the service of a summons on the presiding officer of said local or subordinate branch or lodge of such society, association or incorporation in which the membership is or was held at the time of the injury, disability or death occurs, shall be sufficient service on said society, association or incorporation to give the court jurisdiction in such action.

As amended, Acts 1899, p. 117, R. S. 1901, §5049.

189. Right to Change Beneficiary.

All certificates of membership, policies or other evidences of interest in any Masonic, Odd Fellow or other benevolent or charitable association, society or incorporation named in section 1 (172 herein) of this act, shall be regarded as a contract between the person whose life is insured by such certificate of membership, policy or other evidence of interest, and the association, society or incorporation of which he is a member; and it shall be lawful for such association, society or incorporation to change the name or names of the payee or payees, beneficiary or beneficiaries named in such certificate of membership, policy or other evidence of interest, on such terms and conditions as the parties to the contract may agree to. R. S. 1901, §5050.

This section only applies to corporations organized under the laws of this state. *Presbyterian Fund v. Allen*, 106 Ind. 593.

When there is no prescribed mode for changing the beneficiaries in a certificate, an assignment of the certificate will have the effect of making such change. *Milner v. Bowman*, 119 Ind. 448.

If the holder of a certificate does all in his power to effect a change in beneficiary, in accordance with the by-laws of the society, such change will be effected, although such by-laws are not strictly complied with. *Isgrigg v. Schooley*, 125 Ind. 94.

Also, see annotation under §163.

CHAPTER X.

BOARDS OF TRADE.

§190. May create and operate system of mutual mortuary benefits—Liability—Past acts legalized.

[Approved March 11, 1901. Acts 1901, p. 426.]

190. May Create and Operate System of Mutual Mortuary Benefits—Liability—Past Acts Legalized.

Section 1. That section nine (9) of an act entitled "an act to authorize the organization of boards of trade and other commercial organizations; defining their powers, prescribing their duties, providing a penalty of forfeiture for violation of the provisions of this act; making provisions for matters properly belonging to this act, and declaring an emergency," approved March 9, 1875, be and the same is hereby amended to read as follows:

Section 9. That the provisions of this act shall not authorize the organization of any banking, insurance, telegraph, mining, manufacturing, warehouse or transportation company, but any board of trade or other commercial organization heretofore organized under this act, or that may hereafter be organized under it, may create and operate among its members a system of mutual mortuary benefits and may raise the benefits, after the death of each member who is a subscriber to the mortuary benefit fund, by an assessment of not more than four (4) dollars upon each living member for the benefit of the beneficiaries of such deceased member, described in the articles of association or by-laws of the corporation or for the benefit of the beneficiaries named by the member himself conformably to the articles of association or by-laws, and said corporation may make continued membership in the corporation itself, of a living member, conditional upon his paying such assessments promptly: Provided, however, That the corporation shall only be liable to any beneficiary to the extent of the assessment in his favor [that] has been received by it, and provided further that the fund so collected shall not be depleted by any salary of officers or other expenses, but the whole thereof shall be paid to the beneficiary. Any such system of mutual mor-

tuary benefits as has heretofore been organized by any such corporation and now exists, which would if organized after the passage of this act be valid, and the past acts of such corporations carrying the same into effect, are hereby validated and legalized. R. S. 1901, §4631.

CHAPTER XI.

STEAM BOILER, ACCIDENT, EMPLOYERS' LIABILITY, CASUALTY, PLATE GLASS, SPRINKLER AND BURGLARY INSURANCE.

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| §191. Number of persons necessary to incorporate—Kinds of business may engage in. | §202. Rights of company to change securities. |
| 192. Articles of incorporation—Name of company—When auditor may reject name. | 203. Increase of capital stock—How made. |
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[Acts 1903, pp. 242-249.]

191. Number Persons Necessary to Incorporate—Kinds of Business May Engage In.

Sec. 1. Any ten or more persons, a majority of whom shall be residents of the state of Indiana, may associate in accordance

with the provisions of this act and form an incorporated company for any one or more of the following purposes:

First. To inspect steam boilers and other vessels, appliances and connections, and to insure against loss or damage to the life and property of the assured, or loss or damage to the life, person or property of another for which the assured is liable, caused by explosions or other accident in the use of steam boilers and other vessels, appliances and connections.

Second. To insure any person against bodily injury or death by accident, to make insurance upon the health of individuals, to insure any person, firm or corporation against loss or damage on account of bodily injury or death by accident of any person for which loss or damage said person, firm or corporation is responsible and liable; and to provide for the payment of wages or partial wages or other form of indemnity on account of accident resulting in bodily injury or death.

Third. To insure against the breakage of plate glass, local or in transit.

Fourth. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

Fifth. To insure against loss or damage by burglary, theft or house breaking. Acts 1903, p. 242.

192. Articles of Incorporation—Name of Company—When Auditor May Reject Name.

Sec. 2. Such persons shall associate themselves together by articles of incorporation in writing, for the purpose of forming an accident or casualty insurance company, which articles shall specify the name by which the company shall be known, the place in which its principal office will be established or located, the amount of its capital stock, the general object of the company, and the proposed duration of the same. Any name not previously in use by any existing company may be adopted. The auditor of state shall reject any name or title, when in his judgment it too closely resembles that of any existing company or is likely to mislead the public. Acts 1903, p. 243.

Right to corporate name. Supreme Court, etc., v. Supreme Court, etc., 94 Wis. 234; Grand Lodge, etc., v. Graham, 96 Iowa 592; International, etc., Co. v. International, etc., Co., 153 Mass. 271, 10 L. R. A. 758; High Court, etc., v. Insurance, etc., 98 Wis. 94; Employers', etc., Corp. v. Employers', etc., Co., 29 N. Y. Supp. 217. Opinion Attorney-General Taylor. 1899.

193. Submission of Articles to Auditor of State—Duty of Attorney-General—Duty of Secretary of State.

Sec. 3. The subscribers to said articles of incorporation shall acknowledge the same before some one empowered to take acknowledgments of deeds, and forward the same to the auditor of state, who shall, in case he approves of the title of the proposed company, submit said articles of incorporation to the attorney-general for examination, and if found by the attorney-general to be in accordance with the provisions of this act, and not inconsistent with the constitution of this state or of the United States, he shall certify the same to the secretary of state, with his approval endorsed thereon, who shall file the same in his office. Acts 1903, p. 243.

194. Selection of Officers and Directors—Opening of Subscription Books.

Sec. 4. The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer, and such number of directors, not less than five, who shall continue in office for the period of one year from the date of filing articles of incorporation and until their successors shall be duly chosen and qualified, as hereinafter provided. They shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed. Acts 1903, p. 243.

Construed in *Van Riper v. American Central Ins. Co.*, 60 Ind. 123.

Persons who subscribe for stock conditionally do not become stockholders until the performance of the conditions. *Railroad Co. v. Shearer*, 10 Ind. 244.

The directors of a corporation are trustees for the stockholders in the management of the business of the corporation, but not in their individual dealings with a stockholder as to his interest in the corporate property. *Board, etc., v. Reynolds*, 44 Ind. 509.

It is not necessary that a stockholder should have a certificate of stock owned by him to entitle him to vote at an election of directors. *Beckett v. Houston*, 32 Ind. 393; *Butler v. Schoonover*, 114 Ind. 381.

195. Amount of Capital Stock Required—Investment of Funds—Deposit with Auditor of State—License to Do Business.

Sec. 5. Companies organized under the provisions of this act shall have not less than three hundred thousand dollars (\$300,000) of capital stock subscribed, three hundred thousand dollars (\$300,000) of which shall be paid up and invested in bonds of the United States or of this state or of any county or of any municipi-

pality of the state, or in bonds or mortgages upon unincumbered real estate in the state of Indiana, worth at least double the sum loaned thereon. (If buildings are considered a part of the value of the real estate they must be insured for the benefit of the mortgagee.) Seventy-five thousand dollars of such securities shall be deposited with the auditor of state, and upon said deposit and satisfactory evidence to the auditor of state that the capital stock of at least three hundred thousand dollars is all subscribed and paid up in cash in good faith, and that such stock has been invested as herein prescribed, and upon the deposit of the sum of seventy-five thousand dollars of such securities or in cash with the auditor, then said auditor shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer or stockholder of said company. Acts 1903, p. 243.

196. Rights of Corporation—By-Laws.

Sec. 6. A corporation organized or doing business under the provisions of this act, shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may have the power to make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and may change or alter the same at pleasure, and in the name of the corporation or by a trustee chosen by the board of directors, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees or managers, make by-laws and amendments thereto not inconsistent with the laws or the constitution of the state or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporations, together with the qualifications and duties of the same, and fixing the term of office. Acts 1903, p. 244.

197. Annual Statement—Form of Statement.

Sec. 7. The president, vice-president and secretary, or a majority of directors or trustees of each company organized under the provisions of this act, shall, annually on the first day of January, or within sixty days thereafter, prepare and deposit in the office of the auditor of state a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

First. Name and where located. (a) Names of officers. (b) The amount of capital stock. (c) The amount of capital stock paid in.

Second. Assets. (a) The value of real estate owned by said company. (b) The amount of cash on hand. (c) The amount of cash deposited in bank or trust company. (d) The amount of bonds of the United States, and all other bonds, giving names and amounts, with par and market values of each kind. (e) The amount of loans secured by first mortgage on real estate. (f) The amount of all other bonds, loans and how secured, with rate of interest. (g) The amount of notes given for unpaid stock and how secured. (h) The amount of interest due and unpaid. (i) All other credits or assets.

Third. Liabilities. (a) The amount of losses due and unpaid. (b) The amount of claims for losses unadjusted. (c) The amount of claims for losses resisted.

Fourth. Income during the year. (a) The amount of fees received during the year. (b) The amount of interest received from all sources. (c) The amount of receipts from all other sources.

Fifth. Expenditures during the year. (a) The amount paid for losses. (b) The amount of dividends paid to stockholders. (c) The amount of commissions and salaries paid to agents. (d) The amount paid to officers for salaries. (e) The amount paid for taxes. (f) The amount of all other payments or expenditures.

Sixth. Miscellaneous. (a) The amount paid in fees during the year. (b) The amount paid for losses during the year. (c) The whole amount of insurance issued and in force on the 31st day of December of the previous year. Acts 1903, p. 244.

198. Auditor May Change Form of Statement.

Sec. 8. The auditor of state is authorized to amend the form of statement and to exact such additional information as he may think necessary in order that a full exhibit of the standing of companies organized and doing business under this act may be shown. Acts 1903, p. 245.

199. Failure of Company to Comply with Law—Duty of Auditor.

Sec. 9. Upon the failure of any company organized or doing business under this act to make the deposit or to file the statement in time as stated in the preceding section, the auditor of state shall notify such company to issue no new insurance until there should have been a compliance with said requirements, and it

shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with. Acts 1903, p. 245.

200. Examinations by Auditor.

Sec. 10. The auditor of state may at any time make personal examination of the books, papers and securities of any company organized and doing business under the provisions of this act, or may authorize or empower any other suitable person to make such examinations, and for the purpose of securing a full and true exhibit of its affairs, he or the person selected by him shall have power to examine under oath any officer of said company relative to its business management. Acts 1903, p. 245.

201. Proceedings for Receiver—Duty of Auditor—Duty of Attorney-General—Suits Against Company Forbidden.

Sec. 11. If the auditor of state shall at any time find from any report or examination that the company has not complied with the provisions of this act, he shall refer the facts to the attorney-general, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. But in no other way can the auditor of state or other person restrain or interfere with the prosecution of business of any company doing business under provisions of this act, except in actions by judgment creditor or in proceedings supplementary to execution. Acts 1903, p. 246.

Policy-holder can not maintain action for receiver. *Swan v. Mutual, etc., Assn. (N. Y.)*, 49 N. E. Rep. 258; *Fullenwider v. Supreme, etc., League (Ill. App.)*, 30 Chicago L. N. 187, 180 Ill. 621; *Lowery v. State Life Ins. Co.*, 153 Ind. 100. See *Muller v. State Life Ins. Co.*, 27 Ind. App. 45.

Appointment of a receiver does not annul an action brought by a policy-holder. *Bedell v. North American, etc., Co.*, 7 Daly 273; *Writner v. Universal, etc., Co.*, 4 Abb. (N. C.) 23.

Appointment of receiver can not be questioned collaterally in another tribunal. *Attorney-General v. Guardian, etc., Co.*, 77 N. Y. 297; *People v. Atlantic, etc., Co.*, 74 N. Y. 177; *Bank v. U. S., etc., Co.*, 105 Ind. 227.

After appointment of receiver judicial action must follow the statute. *Attorney-General v. Atlantic, etc., Co.*, 77 N. Y. 336.

Appointment of receiver terminates all existing agencies as far as claims for salaries are concerned. *People v. Globe, etc., Co.*, 91 N. Y. 174.

202. Rights of Company to Change Securities.

Sec. 12. Companies shall have the right at any time to change their securities on deposit with the auditor of state by substituting for those withdrawn a like amount in other securities of the

character provided for in this act, but securities to the amount of at least twenty-five per cent. of the stock subscribed shall at all times be and remain on deposit. Acts 1903, p. 246.

203. Increase of Capital Stock—How Made.

Sec. 13. Any company organized under the provisions of this act may increase the capital stock of the same at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for the period of four consecutive weeks; but no increase of capital stock in less amount than fifty thousand dollars is hereby authorized. Acts 1903, p. 246.

204. Dividends—When and How Made.

Sec. 14. The directors of any company organized under this act shall not make any dividends except from the surplus profit arising from their business. No dividends shall be declared except at the close of the year and at the time when, by law, the company is required to file its annual statement with the auditor of state. Acts 1903, p. 246.

Liability of directors where dividends are declared while company insolvent. *Tradesman's Co. v. Knoxville, etc., Co.*, 31 L. R. A. 593, 95 Tenn. 634.

205. Voluntary Dissolution of Company—How Effected.

Sec. 15. If at any time any company organized under this act shows to the circuit or superior court of the county where its principal office is located, that it wishes to retire from business, that it has no unpaid liabilities of any character, such court shall, if it finds such facts to be true, enter an order directing the auditor of state to surrender to said company all funds or securities theretofore deposited with him by such company. No order shall be made until the auditor of state shall have been notified of the pendency of such application at least ten days before the time set for the hearing thereof and until a full hearing by said court. Acts 1903, p. 246.

206. Interest on Deposit—When Company May Collect—When Auditor Shall Collect.

Sec. 16. The auditor of state shall permit companies having on deposit with him bonds on [as] security, to collect the interest accruing on such deposit, delivering to their authorized agent re-

spectively the coupons or other evidence of interest as the same shall become due; but upon default by any company to deposit additional security as called for by the auditor of state, or pending any proceedings to close up or enjoin it, the auditor of state shall collect the interest as it becomes due, and add the same as security in his hands belonging to such company. Acts 1903, p. 247.

See *People v. American, etc., Co.*, 147 N. Y. 25. The doctrine of estoppel applies in favor of the superintendent as to stock deposits. *Smyth v. Monroe*, 84 N. Y. 354.

For distribution on insolvency of company, see *Joyce on Insurance*, §1288; *B. & A. R. Co. v. Mercantile, etc., Co.*, 82 Md. 535; *Farmers', etc., Co. v. Aberle*, 46 N. Y. Supp. 10.

As to right of auditor to surrender securities to company, see *Hayne v. Metropolitan, etc., Co.* (Minn.), 69 N. W. Rep. 916.

207. Doing Business Without License—Penalty.

Sec. 17. Any company organized or doing business under this act without a certificate as provided for in this act, shall forfeit one hundred dollars for every day it continues to write new business in this state without such certificate. Acts 1903, p. 247.

208. Suit to Recover Penalty—Where and How Brought.

Sec. 18. Suits brought to recover any of the penalties provided for in this act shall be instituted in the name of the state of Indiana on relation of the prosecuting attorney of the circuit court of the county in which the principal office of said company is located, under the direction and by the authority of the auditor of state. Such penalties, when recovered, shall be paid into the state treasury for the use of the school fund. Acts 1903, p. 247.

209. Investment of Funds.

Sec. 19. No company organized under the provisions of this act shall invest its funds in any other manner than as follows: In bonds of the United States, in bonds of this state or of any other state, at or above par, in bonds and mortgages or unincumbered real estate within this state, worth at least double the amount loaned thereon; the value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located (if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgagee); in bonds or other evidence of indebtedness bearing interest, of any county, incorporated city, town or school district, within the state, where such bonds or other evidence of indebtedness are issued by authority

of law, and upon which interest has never been defaulted; in loans upon bonds or mortgages of par value, if the current value of such bonds or mortgages is at least twenty-five per cent. more than the amount loaned thereon. Acts 1903, p. 247.

Mortgage not void if mortgaged property not worth double amount loaned. *Washington, etc., Co. v. Clason*, 45 N. Y. Supp. 27.

Solvent stocks include bonds or mortgages upon unincumbered real estate. Opinion Attorney-General Ketcham, 1897.

Securities are not required to be within the state. Opinion Attorney-General Ketcham, 1897.

Improvement lien under Barrett law is encumbrance within meaning of this section. Opinion Attorney-General Taylor, 1900.

210. Real Estate—Purposes for Which Same May Be Acquired.

Sec. 20. No company organized under this act shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

First. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

Second. Such as shall have been mortgaged to it in good faith for money due.

Third. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings, and which must be taken in by the company on account of the debt secured by such mortgage.

Fourth. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts. And no company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purposes. Acts 1903, p. 248.

211. Real Estate—When Must Be Disposed Of.

Sec. 21. All real estate acquired as aforesaid, except such as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned unless the said company shall procure a certificate from the auditor of state that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended

to such time as the auditor of state shall direct in said certificate. Acts 1903, p. 248.

Failure to sell within such time without certificate does not affect title. *Home Ins. Co. v. Head*, 30 Hun 405.

212. License to Do Business—Auditor's Certificate.

Sec. 22. The auditor of state, upon due proof by a company organized under the provisions of this act, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under these statutes, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to transact business authorized by this act, mentioned in the preceding sections, and of its solvency and credit. Acts 1903, p. 248.

213. Companies Subject to This Act.

Sec. 23. Only companies organized and doing business under the provisions of this act shall be subject to its provisions. Acts 1903, p. 248.

214. Fees of Auditor.

Sec. 24. The auditor of state shall charge for filing the preliminary statement or for filing the annual statement required by the provisions of this act, a fee of ten dollars; and for each certificate and seal he shall charge a fee of one dollar. Acts 1903, p. 248.

The fees herein provided must be paid by the auditor into the state treasury. R. S. Ind. 1901, §6422.

215. Liability of Stockholders.

Sec. 25. The stockholders of any company organized under this act shall be individually liable to an amount over and above their stock equal to their respective shares of stock for all debts or liabilities of such company. Acts 1903, p. 249.

CHAPTER XII.

DOMESTIC SURETY COMPANIES.

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[Act approved March 2, 1901. Acts 1901, pp. 63 to 72.]

216. Powers of Surety Company.

Section 1. That any five or more persons, citizens of this state, may associate in accordance with the provisions of this act, and form an incorporated company for the purpose of guaranteeing the fidelity of persons holding places of public or private trust, and performing a contract, other than insurance, and executing or guaranteeing bonds or undertakings required or permitted in actions or proceedings or by law allowed. R. S. 1901, §5494j.

Liability of company on guaranty bonds. May on Insurance (4th ed.), pp. 1267-1278, §§540-547b.

217. Articles of Incorporation—Name.

Sec. 2. Such persons shall associate themselves together by articles of incorporation in writing, for the purpose of forming a

bonding or surety company, which articles shall specify the name by which the company shall be known, the place in which its principal office will be established or located, the amount of its capital stock, the general object of the company, and the proposed duration of the same. Any name not previously in use by any existing company may be adopted, but such name must clearly indicate the object and purpose of the company. The auditor of state may reject any name or title, when in his judgment it too closely resembles that of any existing company or is likely to mislead the public. R. S. 1901, §5494k.

218. Duty of Auditor and Attorney-General.

Sec. 3. The subscribers to said articles of incorporation shall acknowledge the same before some one empowered to take acknowledgements of deeds, and forward the same to the auditor of state, who shall, in case he approves of the title of the proposed company, submit said articles of incorporation to the attorney-general for examination, and if found by the attorney-general to be in accordance with the provisions of this act, and not inconsistent with the constitution of this state or of the United States, he shall certify the same to the secretary of state, with his approval endorsed thereon, who shall file the same in his office. R. S. 1901, 5495 l.

219. Officers—Subscription of Stock.

Sec. 4. The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer and such number of directors, not less than five, who shall continue in office for the period of one year from the date of filing the articles of incorporation and until their successors shall be duly chosen and qualified as hereinafter provided. They shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed. R. S. 1901, §5494m.

220. Capital Stock—Deposit with Auditor—Loans Forbidden.

Sec. 5. Companies organized under the provisions of this act shall have not less than two hundred thousand dollars (\$200,000) of capital stock subscribed, two hundred thousand dollars (\$200,000) of which shall be paid up and invested in bonds of the United States or of this state or of any county or of any municipality of this state or in bonds or mortgages upon unincumbered real estate in the state of Indiana worth at least double the sum

loaned thereon. (If buildings are considered a part of the value of the real estate they must be insured for the benefit of the mortgagee.) Fifty thousand dollars of such securities shall be deposited with the auditor of state and upon said deposit and satisfactory evidence to the auditor of state that the capital stock of at least two hundred thousand dollars is all subscribed and paid up in cash in good faith and that such stock has been invested as herein prescribed and upon the deposit of the sum of fifty thousand dollars of such securities or in cash with the auditor then said auditor shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer or stockholder of said company. R. S. 1901, §5494n.

221. Powers.

Sec. 6. A corporation organized or doing business under the provisions of this act, shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may have the power to make or enforce contracts in relation to the business of such corporation, may have and use a common seal and may change or alter the same at pleasure, and in the name of the corporation, or by a trustee chosen by the board of directors, shall, in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees or managers, make by-laws and amendments thereto not inconsistent with the laws or the constitution of the state or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporations, together with the qualifications and duties of the same, and fixing the term of office. R. S. 1901, §5494o.

222. Annual Statements—Form.

Sec. 7. The president, vice-president and secretary or majority of directors or trustees of each company organized under the provisions of this act shall, annually, on the first day of January, or within sixty days thereafter, prepare and deposit in the office of the auditor of state, a verified statement of the condition of such company on the 31st day of December of the preceding year showing:

First. Name and where located.

- a. Names of officers.
- b. The amount of capital stock.
- c. The amount of capital stock paid in.

Second. Assets.

- a. The value of real estate owned by said company.
- b. The amount of cash on hand.
- c. The amount of cash deposited in bank or trust company.
- d. The amount of stocks and bonds of the United States, and all other bonds, giving names and amounts, with par and market values of each kind.
- e. The amount of loans secured by first mortgage on real estate.
- f. The amount of all other bonds, loans, and how secured, with rate of interest.
- g. The amount of notes given for unpaid stock and how secured.
- h. The amount of interest due and unpaid.
- i. All other credits or assets.

Third. Liabilities.

- a. The amount of losses due and unpaid.
- b. The amount of claims for losses unadjusted.
- c. The amount of claims for losses resisted.

Fourth. Income during the year.

- a. The amount of fees received during the year.
- b. The amount of interest received from all sources.
- c. The amount of receipts from all other sources.

Fifth. Expenditures during the year.

- a. The amount paid for losses.
- b. The amount of dividends paid to stockholders.
- c. The amount of commissions and salaries paid to agents.
- d. The amount paid to officers for salaries.
- e. The amount paid for taxes.
- f. The amount of all other payments or expenditures.

Sixth. Miscellaneous.

- a. The greatest amount of any bond issued by the company.
- b. The amount paid in fees during the year.
- c. The amount paid for losses during the year.
- d. The whole amount of liability on bonds issued and in force on the 31st day of December of the previous year. R. S. 1901, §5494p.

223. Auditor May Amend Form.

Sec. 8. The auditor of state is authorized to amend the form of statement and to exact such additional information as he may

think necessary in order that a full exhibit of the standing of companies organized and doing business under this act may be shown. R. S. 1901, §5494q.

224. Failure of Company to Make Deposit or Report.

Sec. 9. Upon the failure of any company organized or doing business under this act to make the deposit or to file the statement in time as stated in the preceding section, the auditor of state shall notify such company to issue no new bonds until there shall have been a compliance with said requirements, and it shall be unlawful for any such company to thereafter issue any bond until such requirements shall be complied with. R. S. 1901, §5494r.

225. Auditor May Examine Books—Suits on Bonds—Jurisdiction.

Sec. 10. The auditor of state may at any time make personal examination of the books, papers and securities of any company organized and doing business under the provisions of this act, or may authorize or empower any other suitable person to make such examinations, and for the purpose of securing a full and true exhibit of its affairs, he or the person selected by him shall have power to examine under oath, any officer of said company relative to its business management. Suit on any bond or other obligation of such company may be brought in the circuit court of the county in which the same was required by law to be filed, or in which the same was issued, to be in force, and process may be had upon any agent or officer of such company either in such county or in the home office of such company. R. S. 1901, §5494s.

226. Suit for Receiver—Attorney-General.

Sec. 11. If the auditor of state shall at any time find from any report or examination that the company has not complied with the provisions of this act, he shall refer the facts to the attorney-general who shall proceed to ask the proper court to appoint a receiver for said company, who shall under direction of the court wind up the affairs of said company. But in no other way can the auditor of state or other person restrain or interfere with the prosecution of business of any company doing business under provisions of this act, except in actions by judgment creditor or in proceedings supplementary to execution. R. S. 1901, §5494t.

As to right of other persons to use see annotation to §104 herein.
Appointment of receiver and effect see annotation to §101 herein.

227. Deposit with Auditor—May Change Securities.

Sec. 12. Companies shall have the right at any time to change their securities on deposit with the auditor of state by substituting for those withdrawn a like amount in other securities of the character provided for in this act, but securities to the amount of at least twenty-five per cent. of the stock subscribed shall at all times be and remain on deposit. R. S. 1901, §5494u.

See annotation to §102.

228. Increase of Capital Stock.

Sec. 13. Any bonding or surety company organized under the provisions of this act may increase the capital stock of the same, at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation, for the period of four consecutive weeks; but no increase of capital stock in less amount than fifty thousand dollars is hereby authorized. R. S. 1901, §5494v.

229. Dividends, How Made.

Sec. 14. The directors of any bonding or surety company shall not make any dividends except from the surplus arising from their business, nor divide, withdraw or in any way pay the stockholders or any of them any part of its capital or reduce the net surplus of the company to an amount less than the whole amount of the unearned premium or fees on live or existing obligations. No dividends shall be declared except at the close of the year and at a time when, by law, the company is required to file its annual statement with the auditor of state. R. S. 1901, §5494w.

230. Dissolution of Company—How Procured.

Sec. 15. If at any time any company organized under this act shows to the circuit or superior court of the county where its principal office is located, that it wishes to retire from business, that it has no unpaid liabilities of any character, such court shall, if it finds such facts to be true, enter an order directing the auditor of state to surrender to said company all funds or securities theretofore deposited with him by such company. No such order shall be made until the auditor of state shall have been notified of the pendency of such application at least ten days before the time set for the hearing thereof and until a full hearing by said court. R. S. 1901, §5494x.

231. Collection of Interest on Deposit.

Sec. 16. The auditor of state shall permit companies having on deposit with him stock or bonds as security, to collect the interest accruing on such deposit, delivering to their authorized agent respectively the coupons or other evidence of interest as the same shall become due; but upon default by any company to deposit additional security as called for by the auditor of state, or pending any proceedings to close up or enjoin it, the auditor of state shall collect the interest as it becomes due, and add the same to the security in his hands belonging to such company. R. S. 1901, §5494y.

See annotation to §106.

232. Penalty for Doing Business Without Certificate.

Sec. 17. Any company organized or doing business under this act without a certificate as provided for in this act, shall forfeit one hundred dollars for every day it continues to write new business in this state without such certificate. R. S. 1901, §5494z.

233. Suit for Penalty, How Brought.

Sec. 18. Suits brought to recover any of the penalties provided for in this act, shall be instituted in the name of the state of Indiana on relation of the prosecuting attorney of the circuit court of the county in which the principal office of said company is located, under the direction and by the authority of the auditor of state. Such penalties, when recovered, shall be paid into the state treasury for the use of the school fund. R. S. 1901, §5494a1.

234. Manner and Character of Investments.

Sec. 19. No company organized under the provisions of this act shall invest its funds in any other manner than as follows: In bonds of the United States, in bonds of this state or of any other state, at or above par, in bonds and mortgages on unincumbered real estate within this state, worth at least double the amount loaned thereon, the value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located, (if buildings are considered as a part of the value of such real estate, they must be insured for the benefit of the mortgagee); in bonds or other evidence of indebtedness bearing interest, of any county, incorporated city, town or school district within the state where such bonds or other evidence of indebtedness are issued by authority of law, and upon which interest has never been defaulted; in loans upon

bonds or mortgages of par value, if the current value of such bonds or mortgages is at least twenty-five per cent. more than the amount loaned thereon. R. S. 1901, §5494b1.

235. Purposes for Which Real Estate May Be Purchased, Held and Conveyed.

Sec. 20. No company organized under this act shall be permitted to purchase, hold or convey real estate, except for the purposes and in the manner herein set forth.

First. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

Second. Such as shall have been mortgaged to it in good faith for money due.

Third. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings, and which must be taken in by the company on account of the debt secured by such mortgage.

Fourth. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts, And no company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purposes. R. S. 1901, §5494c1.

236. Sale of Real Estate.

Sec. 21. All real estate acquired as aforesaid, except such as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall hold such real estate for a longer period than that above mentioned unless the said company shall procure a certificate from the auditor of state that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the auditor of state shall direct in said certificate. R. S. 1901, §5494d1.

237. Purposes for Which Bonds May Be Given.

Sec. 22. Whenever any bond, recognizance, obligation, stipulation or undertaking is by law or the rules or regulations of any board, body or organization, required or permitted to be made, given, tendered, or filed for the security or protection of any person, persons, corporation, state, county, township, municipi-

pality or other organization whatsoever, conditioned for the doing or not doing of anything in any such instrument specified, and all heads of departments, public officers, state, county, town or municipal, and any and all boards, municipalities, committees thereof, courts and judges now or hereafter required or permitted to accept or approve the sufficiency of any such bond, recognizance, obligation, stipulation or undertaking may accept and approve the same whenever it is executed or the conditions thereof are guaranteed solely by a corporation authorized to guarantee the fidelity of persons holding places of public or private trusts, and the performance of contracts, other than of insurance, and to execute and guarantee bonds and undertakings required or permitted in actions or proceedings or by law allowed; and whenever any such bond, recognizance, obligation, stipulation or undertaking so required or permitted to be made, given, tendered or filed with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the conditions thereof shall be sufficient when guaranteed solely by such companies so authorized, and shall be in all respects a full and complete compliance with every law, ordinance, rule or regulation that such bond, undertaking, recognizance, obligation, or stipulation shall be executed or guaranteed by one or more sureties, or that such sureties shall be resident householders, or freeholders; and any and all heads of departments, courts, judges, boards, municipalities or committees thereof, and any and all public officers, state, county, town or municipal, whose duty it may be to accept or approve the sufficiency of any such instrument, may accept and approve the same when executed or guaranteed by such corporation; and all such corporations may execute or guarantee such bonds, recognizances, obligations, stipulations or undertakings, whether given under the laws of this state or of any other state or of the United States, or of any other country. R. S. 1901, §5494e1.

238. Certificate of Qualification to Act as Surety.

Sec. 23. The auditor of state upon due proof by a bonding or surety company of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under these statutes, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to become and to be accepted as sole surety in all instruments mentioned in the preceding sections, of its solvency and credit for all purposes and its

sufficiency as such surety; and said certificate or a copy thereof certified as aforesaid shall be equivalent to the justification required of sureties by law. R. S. 1901, §5494f1.

239. Release from Surety Bond.

Sec. 24. Any corporation executing any instrument as provided by this act may be released from its liability thereon on the same terms and conditions as are or may be by law prescribed for the release of individuals upon the same. R. S. 1901, §5494g1.

240. Fiduciary May Include Expense of Bond.

Sec. 25. Any receiver, assignee, guardian, committee, trustee, executor, administrator or other fiduciary, required by law or the order of any court or judge, to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust such reasonable sum paid a corporation authorized by law so to do, for becoming his surety on such bond or obligation as may be allowed by the court in which, or the judge before whom he is allowed or required to account, not exceeding one per cent. per annum on the amount of such bond or obligation by such surety executed; and in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid by him to such corporation for executing or guaranteeing any bond or obligation therein. R. S. 1901, §5495h1.

241. Receive Deposit of Trust Funds.

Sec. 26. Any receiver, assignee, guardian, trustee, committee, executor, administrator or other fiduciary or party of whom a bond, or undertaking or other obligation is required, may agree and arrange with the surety or sureties for the deposit for safe keeping of any and all moneys, assets for which he is or may be responsible with a bank, savings banks, safe deposit or trust company authorized by law to do business as such, located in the county where the trust is being administered and in such manner as to prevent the withdrawal or alienation of such money, assets or other property or any part thereof, without the written consent of such surety or sureties or any order of a court or judge thereof, made on such notice to such surety as the court or judge may direct. R. S. 1901, §5494i1.

242. Foreign Surety Companies Not Affected.

Sec. 27. Nothing in this act shall be construed as affecting or governing bonding or surety companies organized under the laws

of any other state or country, and companies organized and doing business under the provisions of this act shall be subjected only to its provisions. R. S. 1901, §5494j1.

243. Fee of Auditor.

Sec. 28. The auditor of state shall charge for filing the preliminary statement or for filing the annual statement required by the provisions of this act, a fee of ten dollars; and for each certificate and seal he shall charge a fee of one dollars. R. S. 1901, §5494k1.

244. Liability of Stockholders.

Sec. 29. The stockholders in every such bonding or surety company shall be individually liable to an amount over and above their stock, equal to their respective shares of stock for all debts or liability of such company. R. S. 1901, §5494l1.

245. Report of Loan, Trust and Safe Deposit Companies—Reserve Liability.

Sec. 1. Every corporation doing business under the law of this state, entitled "An act to authorize the organization and incorporation of loan, and trust, and safe deposit companies, and defining their powers, rights and duties and other matters connected therewith," approved March 4, 1893, in rendering to the auditor of state the actual account of its condition, shall always state specifically the full amount of all its outstanding obligations incurred by reason of its guaranteeing or becoming surety for the faithful performance by any person of any duties whatsoever, and shall at the same time also state specifically the amount of premiums charged and received by it on such obligations as may then be in force. And in estimating at any time the condition of such corporation the auditor of state shall charge as liabilities, in addition to the full amount of the capital stock outstanding, all outstanding indebtedness of the corporation and a premium reserve equal to fifty per centum of the premiums charged by the corporation on all its obligations then in force on account of its guaranteeing or becoming surety for the performance by any person of any duties whatsoever. Acts 1901, p. 189. R. S. 1901, §5015b.

246. Savings Deposits, How Held.

Sec. 2. Every corporation organized under the act described by its title in the preceding section, which, in the conduct of its business, may accept savings deposits, is hereby authorized and

required to accept and hold such deposits under the same regulations as to the repayment thereof as are now prescribed by the law of this state for the repayment of deposits in savings banks. Acts 1901, p. 190, R. S. 1901, §5015c.

CHAPTER XIII.

LIVE STOCK INSURANCE ON THE STOCK PLAN.

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247. Organization of Companies.

Any number of citizens of this state not less than five, may organize an insurance company for the purpose of insuring the owners of live stock against loss of such stock by death from any cause, and against theft or accident. R. S. 1901, §4933.

248. Articles of Association.

The persons desiring to organize an insurance company under this act shall unite in articles of association setting forth the name of the corporation, the purpose of incorporating under this act, the locality of the principal office of the company, the names and residences of the subscribers to the articles of association, and the amount of stock subscribed by each, and shall file such articles of association with the secretary of state, who shall be entitled to a fee of ten dollars (\$10) for the filing, the same to be paid by said company. R. S. 1901, §4934.

249. Capital Stock—Payment—Responsibility of Shareholders.

No joint stock, live stock insurance company shall be incorporated under this act with a less capital than one hundred thousand dollars, nor more than five hundred thousand dollars, which shall be divided into shares of one hundred dollars each; fifty per cent. of which shall be paid in upon the stock subscribed, and each subscription before incorporation shall be accompanied by a certificate of the auditor or county clerk where such subscriber resides, that the subscriber is, in his opinion, pecuniarily good and responsible to the extent of the contingent fifty per cent. or liability agreed to be assumed. The manner and time in which payment shall be made upon subscribed stock after fifty per cent. shall have been paid thereon shall be prescribed by the board of directors. R. S. 1901, §4935.

250. Minimum Capital—\$25,000 to Be Invested—Securities—Certificate of Deposit—Auditor to Hold Securities—When Auditor of State to Be Provided with Certificate.

No joint stock, live stock insurance company shall transact any business of insurance in this state with a less capital than \$100,000, fifty per cent. of which shall be paid up and the proper certificate furnished the auditor of this state as to the contingent subscription, as under section 3 (191 herein) of this act; nor until \$25,000 of its capital stock has been invested in interest-paying bonds or stocks of the United States, or of this state, or of some other state of the United States, of the market value of \$25,000 in the city of New York, or in approved municipal or other bonds issued under the laws of the state, or in bonds and mortgages on incumbered real estate in this state, or in the state under the laws of which such company is organized, of at least double the value of the amount loaned thereon, and in no case shall the amount loaned on mortgage exceed the amount at which said real estate is assessed for taxation in the county where located. And such bonds and mortgages are duly assigned and deposited with the auditor of state, or the chief financial or other officer of the state in which such company was organized, designated by the law of such state to receive the same; and if such bonds and mortgages are deposited with the proper officer of another state the auditor of this state shall be provided with a certificate of such officer under his hand and official seal that he, as such officer, holds in trust and on deposit for the benefit of the policy-holder of such company, the securities above mentioned giving the items of such securities and stating that he is satisfied such securities are

worth at least \$25,000, and that he is the proper custodian of such securities under the laws of his state. When such securities are deposited with the auditor of state he shall hold the same as security for policy-holders in the company; but so long as any company so depositing continues solvent he shall permit it to collect the interest or dividends on its securities so deposited, and from time to time to withdraw such securities, or any part thereof, on depositing with him other securities of the kind heretofore named, and of equal value with those withdrawn. R. S. 1901, §4936.

251. Directors and Officers.

The business of companies organized under this act shall be managed and conducted by not less than five nor more than seven directors, who shall each be the owner in his individual name, of not less than ten shares of the capital stock of such company. Said directors shall hold office for one year and until their successors are elected and qualified. The directors shall be chosen, once each year, by the stockholders voting by ballot or by proxy at the principal office of the company at such times as shall be provided in the by-laws of the company. The first directors, the president, vice-president, secretary and treasurer shall be named in the articles of association, who shall serve during the first year. R. S. 1901, §4937.

252. Directors' Meeting — Officers — Quorum — Salaries — By-Laws.

After the annual election of directors the newly elected directors shall meet within five days and shall choose from their number a president and vice-president and shall either from their number or from the stockholders choose a secretary and treasurer, the duties of which officers and the manner of filling vacancies in said offices shall be prescribed by the by-laws of the company. A majority of the directors shall constitute a quorum to do business, and the meeting of the board, both regular and special, shall be called and held as shall be provided by the by-laws of the company. The board of directors, or a majority of them may appoint any other officers or agents necessary for the transaction of the business of the company, and pay such salaries and take such securities as they may judge reasonable; they may ordain and establish such by-laws as shall appear to them necessary for regulating and conducting the business of the company. R. S. 1901, §4938.

253. Transfers of Stock.

Transfers of stocks may be made on the books of the company by any shareholder or his legal representative, subject to such reasonable restrictions as the directors may from time to time make in their by-laws, and subject also to any provisions of the laws of this state relating to such transfers. R. S. 1901, §4939.

254. Limit of Risk.

No live stock company doing business in this state shall place upon any one risk or animal a greater amount than one-twentieth of its actual paid-up capital. R. S. 1901, §4940.

255. Power to Hold Real Estate.

No company organized under this act shall purchase, hold or convey real estate except for the purposes and in the manner herein set forth, to-wit:

First. Such as is requisite for its convenient accommodation in the transaction of its business; or,

Secondly. Such as is mortgaged to it in good faith, by way of security for loans previously contracted or for money due; or,

Thirdly. Such as is conveyed to it in satisfaction of debt previously contracted in its legitimate business; or,

Fourth. Such as is purchased at sale upon judgment, decree or mortgages obtained or made for such debts. R. S. 1901, §4941.

256. Certificate of Incorporation.

Whenever a majority of the directors, of whom the president shall be one, shall file with the auditor of state a statement, under oath, that there has been a subscription of not less than one hundred thousand dollars to the capital stock of such company, and that fifty per cent. thereof has been actually paid in and the certificate required by section 3 (192 herein) of this act and the deposit required by section 4 (193 herein) of this act have been made and the articles of association have been filed in the office of the secretary of state, the auditor of state shall, if satisfied that the provisions of this act have been complied with, certify to the secretary of state the name of the company, the amount of its subscribed and paid-up capital and the principal place of business of the company, which certificate shall be filed with the secretary of state, and thereupon the secretary of state shall issue to said company a certificate of incorporation authorizing it to do business, and such certificate shall be conclusive evidence of the validity of the organization of such company. R. S. 1901, §4942.

257. Fees.

The fees of the auditor and secretary of state shall be \$10 each for such certificate, which shall be paid by such company. R. S. 1901, §4943.

258. Policies—Place of Business.

Every company organized under the provisions of this act may make and issue policies of insurance against loss of live stock by reason of death from any cause, accident or theft, anywhere within the limits of the United States, but the principal office of said company shall be kept in the state of Indiana. R. S. 1901, §4944.

See annotation under §72.

259. Form of Policy—Adjustment of Losses.

The policies of such company shall be in such form as may be prescribed by the board of directors and shall be subscribed by the president and secretary, and the losses under policies for which the company may be liable shall be adjusted and settled in such a manner as may be directed by the board of directors, within such time as may be limited in the policy, not exceeding ninety days from the date of receiving notice of the loss: Provided, That the company may limit the period within which suit may be brought upon any policy, but no limit less than twelve months from date of loss shall be fixed. R. S. 1901, §4945.

See annotation under R. S. 1901, §4859.

See annotation under §23.

260. Statement to Auditor—Publication—Fee.

After the third year of the existence of any company organized in this state the board of directors shall, on the first Monday of July in each year, make and file with the auditor of state, a statement under oath, signed by a majority of the directors and attested by the secretary, setting forth the number of policies issued, the number of losses adjusted and not paid, the number of losses unadjusted and the amount thereof, the amount of paid-up capital stock, the amount of subscribed capital stock, the amount of authorized capital stock and a description of the particular kind, character, and amount of assets of the company, and shall, when required by the auditor of state so to do, publish the same in some newspaper nearest to the principal office of the company, and said company shall pay the auditor of state a fee of \$5 for filing said statement. R. S. 1901, §4946.

These fees must be paid by the auditor into the state treasury, Burns' Supp. 1897, §6422.

261. Foreign Companies—Semi-Annual Statements.

That no company organized under the laws of any other state or country shall be permitted to do the business of live stock insurance in this state unless it shall have a subscribed capital of \$100,000 or more, and an actual paid-up capital of not less than \$50,000; nor shall it be lawful for any such company to do business in this state until it shall have furnished, under oath, to the auditor of state, a statement of like character as that required by this act of companies organized under its provisions, which statement shall also show the amount of actual paid-up capital possessed by the company and shall be renewed semi-annually on the first Monday of January and July of each year; nor shall such foreign company do business in this state until it shall have complied with the provisions of chapter twenty of the Revised Statutes of 1852, being sections 3022 to 3030 inclusive of the Revised Statutes of 1881. R. S. 1901, §4947.

Foreign live stock companies must comply with §3765, R. S. 1881 (amended Acts 1899, p. 551, §209 herein). Opinion Attorney-General Michener, 1888.

262. Personal Liability of Stockholders.

The stockholders of companies organized under the provisions of this act shall each be liable personally for any losses or debts of the company to the extent of and not beyond the stock subscribed by such stockholders. R. S. 1901, §4948.

263. Companies to Comply with This Act.

No joint stock live stock insurance companies doing business in this state shall continue the same after June 1, 1893, without having first complied with the provisions of this act. R. S. 1901, §4949.

264. Penalty for Violation.

Any person who violates any of the provisions of this act shall be fined not more than \$1,000 or imprisoned not more than six months, or both. Any corporation, company or association violating any of the provisions of this act shall be fined not more than \$1,000 nor less than \$100, to be recovered by action in the name of the state, on the relation of the proper prosecuting attorney, and when collected shall be paid into the county treasury for the benefit of the common school fund. R. S. 1901, §4950.

265. Retaliatory Section.

When any other state or country shall impose any obligation upon any live stock insurance company of this state, the like obli-

gation shall be imposed on similar corporations and their agents of such state or country doing business in this state; and it shall be the duty of the auditor of state to enforce the provisions of this section, and for that purpose he may refuse to grant such company a certificate to do business in this state or revoke any that has been granted. R. S. 1901, §4951.

This section is constitutional. *State v. Insurance, etc., Co.*, 115 Ind. 257; *Blackmer v. Royal, etc., Co.*, 115 Ind. 291; *People v. Fire, etc.*, 92 N. Y. 311.

266. Foreign Company, Papers to Be Filed—Examination—Fee.

Such foreign company shall furnish to the auditor of state certified copies of its articles of association or charter, and its by-laws, together with a sworn statement of its business of the preceding year, itemized as directed by the auditor of state. Such foreign corporation shall also furnish to the auditor of state on the first day of January and July of each year a certificate from the insurance department, if any, of its home, state or country, that it is authorized to do business in such home, state or country, and shall, also, if the auditor of state requires, submit to a full examination of its business affairs by the auditor of state. Such company shall pay the fees for examination which shall not exceed \$5 per day for each person employed in making such examination. R. S. 1901, §4952.

267. Certificates to Foreign Companies.

Upon the compliance with the provisions of the preceding section and all of the provisions of this act applicable to foreign companies, and the payment of a fee of \$25, the auditor of state may issue to such foreign company so complying a certificate of authority to do business within this state for a period of six months from the date of its issue, unless the same be sooner revoked: Provided, That such certificate of authority to do business in this state shall not be issued unless such corporation is doing business in conformity with the provisions of this act. The auditor shall have power to revoke or modify any certificate of authority when any conditions prescribed by the laws granting it no longer exists. R. S. 1901, §4953.

Fees must be paid by auditor into state treasury. *Burns' Supp.* 1897, §6422.

268. Receivers—Appointment.

A receiver may be appointed for any such corporation under the general provisions of the law for the appointment of receivers

for corporations. In the event of the appointment of a receiver for any such corporation, such receiver shall be entitled to receive all securities of such company deposited with the auditor of state. And receivers may be appointed by the courts of this state for foreign corporations doing business in this state under this act, and such receivers shall have the right to the possession of any securities of such corporation in the hands of the auditor of this state. And receivers appointed under the provisions of this act shall collect or dispose of securities and pay out the funds realized therefrom as the courts appointing them may direct. R. S. 1901, §4954.

269. To Whom Act Applies.

The provisions of this act shall apply to all individuals and parties, and to all companies and associations, whether incorporated or not, now or hereafter engaged in the insurance of live stock, except mutual companies organized by the farmers of this state, and it is unlawful for any corporation or association, whether organized in this state or elsewhere, either directly or indirectly, to engage in the business of insuring live stock or enter into any contract substantially amounting to insurance on live stock, or in any manner to aid therein, in this state, without first having complied with all the provisions of this act. R. S. 1901, §4955.

270. Laws Repealed.

All laws in conflict with this act, and especially an act entitled "An act concerning the incorporation of live stock insurance companies, defining their powers and prescribing their duties," approved March 9, 1891, are hereby repealed.

CHAPTER XIV.

FARMERS' MUTUAL LIVE STOCK INSURANCE COMPANIES.

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| §271. How formed—Limitation on business. | §273. Reports by secretary and treasurer. |
| 272. Articles of association—Officers—Bonds. | 274. Losses insured against. |

271. How Formed—Limitation on Business.

Any number of persons, not less than five, may form an association for the mutual insurance of the horses, mules, asses, cattle, sheep, hogs and other domestic live stock of its members, against loss by death from disease or accident, or against partial loss by

accidental injury or by theft: Provided, That no company organized under this act shall do any business, take any risks or make any insurance in more than seven counties, which counties shall be contiguous to one another, and shall be set forth in the articles of association. R. S. 1901, §4955a.

A policy on property owned and ordinarily kept in one of the counties covers a loss while the animal is temporarily in another county. *Eddy v. Farmers', etc., Co.*, 41 N. Y. Supp. 854.

Policy issued on property outside of territorial limit is void. *Eddy v. Merchants', etc., Co.*, 72 Mich. 651.

272. Articles of Association—Officers—Bonds.

The articles for forming such association shall be signed by the persons who at first form such association and be recorded in the office of the recorder of the county in which the principal office is situated; such association shall be managed by such officers as their articles may provide for and in the election of such officers each member shall be entitled to one vote. The secretary shall give bond in the sum of \$5,000 for the faithful discharge of his duties and accounting for all moneys which shall come into his hands, and the treasurer shall give bond in like manner in the sum of not less than \$25,000, to be approved by the auditor of the county in which the principal office is situated; said treasurer to collect all assessments made by such association. Every such association may sue or be sued by such name as may be set forth in the articles of association, and shall have all other powers of corporate bodies. R. S. 1901, §4955b.

See annotation under §258.

273. Reports by Secretary and Treasurer.

The persons holding the offices or performing the duties of secretary and treasurer of such associations shall on the first Mondays of January and July of each year make out a sworn statement in writing, setting forth the number of policies issued by the association, the amount issued on each kind of live stock, the number of losses paid and the aggregate amount thereof; the number of losses sustained and unpaid and the aggregate amount thereof; and the amount of money in the hands of the treasurer at the time of making such report; for the filing and recording of each of which statements the association shall pay to the recorder of the county in which the principal office is situated, the sum of \$1. He shall also file said report with the auditor of state, who shall receive like compensation and who shall have power to increase bonds at any time. R. S. 1901, §4955c.

274. Losses Insured Against.

Any association organized under the provisions of this act, shall be entitled to issue policies of insurance to any of its members against loss of live stock by death from disease or accident, or against partial loss by accident or theft. R. S. 1901, §4955d.

CHAPTER XV.**FARMERS' MUTUAL CYCLONE, WIND STORM OR HAIL INSURANCE COMPANIES.****§275. Organization—Powers—Territory—Liability.****275. Organization—Powers—Territory—Liability.**

Any number of persons, not less than fifty, may form an incorporated company for the purpose of mutual insurance of the property of its members against destruction or damage by cyclones, wind storms or hail; which property to be insured shall embrace dwelling-houses, barns, accompanying outbuildings and their contents, wagons, carriages, harness, household goods, wearing apparel, provisions, musical instruments, and libraries, live stock, growing crops, and crops severed from the ground, fruit and ornamental trees and shrubs, and live timber, such property being upon farms as farm property, and owned by members of the company in which said property is insured. The articles for forming such association shall be signed by the persons who at first form such association and be recorded in the office of the recorder in such county or counties where such associations do business. Such associations shall be managed by such officers as their articles shall provide for, under such rules and regulations as they may adopt, not in conflict with the statutory law of the state, and in the election of such officers each member of the association shall be entitled to one vote. Each such association may sue or be sued by such name as shall be set forth in the articles of association, and shall have all the other powers of corporate bodies: Provided, That no company organized under this act shall do any business or take any risks or make any insurance in more than five counties, which counties shall be contiguous, and shall be set forth in the articles of association: And provided further, That no company organized under this act shall be liable to pay in excess of ten per cent. of the total amount of insurance in force for

any one loss, to be paid pro rata to said members of such company or association sustaining such loss. R. S. 1901, §4932a.

Solvent members can not be assessed for deficiency owing to non-payment of assessment by insolvent members. *Pratt v. Dwelling-House, etc., Co.*, 7 App. Div. (N. Y.) 544. See annotation to §48.

Officers can not release a member from his contract and statutory liability with other members upon his payment of an insufficient assessment. *Seamans v. Millers, etc., Co.*, 90 Wis. 490.

Policies issued on property outside of the territorial limits fixed by law for the transaction of business by the company are void. *Eddy v. Merchants', etc., Co.*, 72 Mich. 651.

Property kept in one of such counties at the time the policy is issued is covered by the policy though temporarily outside the territory designated at the time of the loss. *Eddy v. Farmers', etc., Co.*, 46 N. Y. Supp. 695.

Property within such territory may be insured without restriction as to place of loss. *Eddy v. Farmers', etc., Co.*, 46 N. Y. Supp. 695.

CHAPTER XVI.

MISCELLANEOUS PROVISIONS BINDING DOMESTIC COMPANIES.

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| §276. False claim—Penalty. | §283. Limited partnership not to transact insurance business. |
| 277. Reinsurance of risks. | |
| 278. Surrender of securities on re-insurance. | 284. Beneficiary must have insurable interest—Medical examination—Penalty. |
| 279. When must quit business. | 285. Presumption of death of absentee. |
| 280. Suits—Jurisdiction of courts. | 286. Tax statement by stock companies—Form of statement—Penalty—Fee of prosecuting attorney. |
| 281. Loans of funds to officers, directors, agents and employes. | |
| 282. Loan of funds by directors or officers. Penalties. | |

276. False Claim—Penalty.

Whoever shall knowingly make any false or fraudulent representation in or with reference to any application for insurance, or present, or cause to be presented, any false or fraudulent claim, with intent to obtain any money or benefit in, to or from any corporation, association or society transacting insurance or indemnity business of any kind; or whoever shall prepare, make or subscribe any account, certificate, survey, affidavit, proof of loss, or other book, paper or writing, with intent to present or use the same, or allow it to be presented or used in support of any such claim; or whoever shall willfully make a false statement of any

material fact or thing in a sworn statement as to the death or disability of the holder of any certificate or policy in any life, accident, casualty or indemnity insurance corporation, association or society, for the purpose of procuring payment of a benefit named in the certificate or policy of such holder, shall, on conviction, be fined not more than one thousand dollars, to which may be added imprisonment in the state prison not less than one year nor more than three years.

[As amended, Acts 1905, p. 741.]

277. Reinsurance of Risks.

Any insurance company organized under the laws of this state may reinsure, by and with the consent of the insured, all their outstanding risks in any joint stock insurance company authorized to transact the business of insurance in Indiana, and such policy and contract of reinsurance shall be as binding upon the company making the same, and its liability to the party whose property is insured shall be the same as if the original policies had been issued by such company. R. S. 1901, §4956.

278. Surrender of Securities on Reinsurance.

Any such insurance company having reinsured all of its outstanding risks, or canceled the same and returned the unearned premiums thereon to the party insured, to the satisfaction and approval of the auditor of state, and having filed in the said auditor's office a sworn statement of a majority of the directors of such company that such company has fully paid and satisfied all claims, debts and demands, of whatsoever character, against it, the auditor of state shall deliver to such company all securities belonging to such company and on deposit in his office, and a certificate that such company has complied with the provisions of this act. R. S. 1901, §4957.

279. When Must Quit Business.

It shall not be lawful for any such company, after having complied with the provisions of this act (section 278 herein), to transact the business of insurance. R. S. 1901, §4958.

280. Suits—Jurisdiction of Courts.

Any action against any corporation organized under any law of this state may be brought in any county where such corporation has an office or agency for the transaction of business, or in which any person resides upon whom process may be served against such corporation. Acts 1899, p. 13. R. S. 1901, §313.

281. Loans of Funds to Officers, Directors, Agents and Employees.

It shall be unlawful for any insurance or trust and deposit company, incorporated under and pursuant to the laws of this state, to loan any of its funds, moneys, capital or other property whatsoever to any director, officers, agent or employe thereof. Acts 1899, p. 158. R. S. 1901, §2031a.

282. Loan of Funds by Directors or Officers—Penalties.

Any board of directors, director or officer of any insurance company, loan and trust and safe deposit company, or surety company, doing business in this state, who shall, directly or indirectly, loan any of its funds, moneys, capital or other property whatsoever, to any director or officer of such insurance company, loan and trust and safe deposit company, or surety company, and any director or officer of any insurance company, loan and trust and safe deposit company, or surety company, doing business in this state, who shall borrow from such insurance company, loan and trust and safe deposit company, or surety company, any of its funds, moneys, capital or other property whatsoever, shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than six months. Acts 1905, p. 685.

283. Limited Partnerships Not to Transact Insurance Business.

Limited partnerships, for the transaction of business within this state, may be formed by two or more persons, upon the terms and subject to the conditions and liabilities prescribed by this act; but nothing contained in this act shall authorize such partnerships for the purpose of insurance. R. S. 1901, §8109.

Unlimited partnership may do insurance business. Opinion Attorney-General Taylor, 1900.

284. Beneficiary Must Have Insurable Interest—Medical Examination—Penalty.

That it shall be unlawful for any person, firm, or agency-corporation to take or receive any application for any insurance upon the life of any person in the state of Indiana unless the beneficiary to be named in such policy shall have a bona fide insurable interest, in whole or in part, in the life of such insured, or unless the beneficiary to be named in such policy is related to the person insured in the degree of kinship not further removed than first cousin.

It shall further be unlawful for any person or firm knowingly, or for any corporation, with the knowledge of any officer thereof, to write any policy of insurance on the life of any individual in the state of Indiana unless the beneficiary named in such policy shall have a bona fide insurable interest, in whole or in part, in the life of such insured, or unless the beneficiary named in such policy is related to the person insured in the degree of kinship not further removed than first cousin, and unless the person so insured shall have first passed a satisfactory medical examination by a physician duly authorized to practice medicine in the state of Indiana, and such examination shall have been duly signed by such physician.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars, to which may be added imprisonment in the county jail for any period not exceeding six months.

Any corporation violating any of the provisions of this act shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars; and upon conviction of a second offense, if a corporation organized under the laws of the state of Indiana, the attorney-general shall institute quo warranto proceedings for the forfeiture of its charter, and if a foreign corporation, its license to do business in Indiana shall be revoked. R. S. 1901, §4894ul.

285. Presumption of Death of Absentee.

The presumption of death recited in the first section (Section 2385, Rev. St. 1894) of the said act above entitled as amended, in the case of any person who, since the passage of said act and the amendment above recited, has absented himself from his usual place of residence and gone to parts unknown, or who has not been heard of for the period of five years, shall relate back to the time of the first disappearance of such absentee; and it shall be presumed and taken by all courts that such absentee was dead on the first day of his disappearance: Provided, however, That this section shall not apply to any suit now pending; neither shall a party holding or entitled to the proceeds of any policy of insurance upon the life of such absentee, where the five years have expired prior to the passage and taking effect of this act, and whose duty it is to make proof of the death of such absentee be required, when such proof is not prohibited by the contract with the in-

suror, to make other proof of death than the fact of the disappearance of the insured for five years continuously. Rev. St. 1901, §2386.

Where a person is absent for five years without tidings, letters of administration may issue on his estate. *Baugh v. Boles*, 68 Ind. 376; *Jones v. Detchon*, 91 Ind. 154.

286. Tax Statement by Stock Companies—Form of Statement—Penalty for Failure to Make Statement—Fee of Prosecuting Attorney.

Sec. 12. Section 73 of the above described act is hereby amended so as to read as follows, to wit: Section 73. Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, saving[s] bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of March and the fifteenth day of May of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In case of the failure or refusal to make report, such corporations shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the fifteenth day of May, to be sued and recovered in any proper form of action in the name of the state of Indiana, on the relation of the prosecuting attorney, such pen-

alty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars, to be taxed as costs in such action. Acts 1903, p. 5.

CHAPTER XVII.

FOREIGN INSURANCE COMPANIES.

Provisions Affecting All Foreign Insurance Companies.

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| <p>§287. Certificate of authority —
Statement to auditor —
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titious company.</p> |
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287. Certificate of Authority—Statement to Auditor—Service of Process—Capital—Filing of Certificate—Publication of Statement.

It shall not be lawful for any agent or agents of any insurance company incorporated by any other state than the state of Indiana, directly or indirectly, or take risks or transact any business of insurance in this state without first producing a certificate of authority from the auditor of state; and before obtaining such

certificate such agent or agents shall furnish the said auditor with a statement, under oath, of the president or the secretary of the company for which he or they may act, which statement shall show :

First. The name and locality of the company.

Second. The amount of its capital stock.

Third. The amount of its capital stock paid up.

Fourth. The assets of the company, including: 1st. The amount of cash on hand and in the hands of agents or other persons. 2d. The real estate unincumbered. 3d. The bonds owned by the company and how they are secured, with the rate of interest thereon. 4th. Debts to the company secured by mortgage. 5th. Debts otherwise secured. 6th. Debts for premiums. 7th. All other securities.

Fifth. The amount of liabilities due or not due to banks or other creditors by the company.

Sixth. Losses adjusted and due.

Seventh. Losses adjusted and not due.

Eighth. Losses unadjusted.

Ninth. Losses in suspense, waiting for further proof.

Tenth. All other claims against the company.

Eleventh. The greatest amount insured in any one risk.

Twelfth. The greatest amount allowed by the rules of the company to be insured in any one city, town or village.

Thirteenth. The greatest amount allowed to be insured in any one block.

Fourteenth. The act of incorporation of such company ; which statement shall be filed in the office of said auditor, together with a written instrument under the seal of the company, signed by the president and secretary, authorizing such agent to acknowledge service of process for and in behalf of such company, consenting that service of process upon such agent shall be taken and held to be as valid as if served upon the company according to the laws of the state, or any other state, and waiving all claims of error by reason of such service. And no insurance company, agent, or agents of any insurance company, incorporated by any other state, shall transact any business of insurance in this state, unless such company is possessed of at least \$200,000 of actual capital invested in the stocks or bonds of some one or more of the states of this Union, or of the United States, or bonds of some one or more of the counties, cities or towns of this state, at the current market value thereof at date of such statement, or in bonds or mortgages

of real estate worth double the amount for which the same is mortgaged, and free from any prior incumbrance, or unless such company is possessed of assets amounting to at least \$2,000,000 and a net surplus over and above all liabilities of at least \$450,000. And upon the filing of the aforesaid statement and instrument with the auditor of state, and furnishing him with satisfactory evidence of such investments, as aforesaid, it shall be the duty of said auditor to issue a certificate thereof, with authority to transact the business of insurance, to the agent or agents applying for the same; and such statement, instrument and evidence shall be renewed semi-annually, in the months of January and July of each year; and the auditor of state, on being satisfied that the capital, securities and investments remain secure, as at first, shall furnish a renewal of certificate, as aforesaid, and the agent or agents obtaining such certificate shall file the same, together with a certified copy of the statement on which it was obtained, in the office of the clerk of the circuit court of the county in which such agency is established, both of which documents shall be carefully preserved for public inspection by said clerk, and note in the vacation entries of the order book of such court:

First. The name of the company.

Second. The name of the agent.

Third. The date of filing such documents. And, when so noted, to index the same in said order book. For which filing, noting and indexing such clerk shall receive from such company the sum of 50 cents; and the entry, when so made in such order book, shall be conclusive evidence in any suit against such company of the facts therein noted, including the authority of the agent named to act for such company. And the auditor shall cause a copy of such semi-annual statement to be published in the two leading daily newspapers of the state having the largest general circulation therein: Provided, That not more than \$1 per square shall be paid for each one of said publications, the expense thereof to be paid by the company: And, provided, That the provisions of this section shall not be construed to extend to, include, or embrace horse insurance and detective companies insuring against thieves. As amended, Acts 1899, p. 551. R. S. 1901, §4915.

The legislature has power to prescribe terms upon which foreign companies will be permitted to do business. *Farmers', etc., Co. v. Harrah*, 47 Ind. 236; *Phenix, etc., Co. v. Burdett*, 112 Ind. 204; *State v. Insurance Co.*, etc., 115 Ind. 257; *Rising Sun, etc., Co. v. Slaughter*, 20 Ind. 520.

Company created by Congress must comply with this section. *Daly v. National, etc., Co.*, 64 Ind. 1.

Company must comply with this section before it can do lawful business. *Farmers', etc., Co. v. Harrah*, 47 Ind. 238.

Company presumed to have complied with law. *Cassaday v. American, etc., Co.*, 72 Ind. 95.

Where there has been substantial compliance with the law the failure of auditor of state to issue certificate of authority will not prevent recovery on premium note. *American, etc., Co. v. Butler*, 70 Ind. 1.

When company shall file renewal of certificate of authority. *American, etc., Co. v. Pettijohn*, 62 Ind. 382.

Policy issued by company before complying with law is binding on the company. *New England, etc., Co. v. Robinson*, 25 Ind. 536; *Behler v. German, etc., Co.*, 68 Ind. 347; *Union, etc., Co. v. Thomas*, 46 Ind. 44. *Contra Rising Sun, etc., Co. v. Slaughter*, 20 Ind. 520.

Also see *Cone, etc., Co. v. Poole*, 24 L. R. A. 289; *Phenix, etc., Co. v. Pennsylvania Co.*, 20 L. R. A. 405.

Failure to comply with law renders note for premium void. *Hoffman v. Banks*, 41 Ind. 1; *Cassaday v. American, etc., Co.*, 72 Ind. 95. *Contra American, etc., Co. v. Wellman*, 69 Ind. 413; *Daly v. National, etc., Co.*, 64 Ind. 1. Opinion Attorney-General Taylor, 1899.

Selection of paper in which to publish statements, made by auditor of state, is final. *Holliday v. Henderson*, 67 Ind. 103.

The agent, and not the company, is required to file certificate of authority in county clerk's office. *State v. Tumeay*, 81 Ind. 559.

Assets must be invested in securities named in this section. Opinion Attorney-General Ketcham, 1896.

This section applies only to incorporated companies. *State v. Campbell*, 17 Ind. App. 442. Opinion Attorney-General Hord, 1884.

This section does not apply to adjusters of losses. *French v. People (Colo.)*, 40 Pac. Rep. 463. *Security Co. v. Bank*, 57 S. W. 22.

Rights of agents under license. Opinion Attorney-General Taylor, 1899.

For annotation of validity of contracts, see *Edison, etc., Co. v. Canadian, etc., Co.*, 24 L. R. A. 318.

Lloyds associations must comply with this section. Opinion Attorney-General Smith, 1894.

Uncertified agents adjusting a loss is not "transacting any business of insurance," within the meaning of this section. *People v. Gilbert*, 44 Hun 522.

This section is constitutional. *People v. Gay*, 65 N. W. Rep. 292.

"Transacting business" construed. *Sparks v. National, etc., Assn.*, 73 Fed. Rep. 277.

RE:

288. Foreign Mutual Fire Companies—Admission to State.

Any mutual fire insurance company organized under the laws of any state of the United States, other than the state of Indiana, having actual cash assets to the amount of fifty thousand dollars and premium notes or contingent liability required of similar companies organized under the laws of this state shall, upon complying with the other laws of this state relating to foreign fire insur-

ance companies, be entitled to transact the business of mutual fire insurance in this state: Provided, That the auditor of state shall as a condition precedent, before issuing a license to any mutual fire insurance company of any other state, or to any agent thereof, applying therefor, require such company or agent to furnish a certificate, under the seal of the department having charge of insurance companies in the state where such company is organized, showing that such company is duly organized, and is solvent and entitled to do the business of mutual fire insurance; and that similar companies of this state, under like conditions, are legally entitled to do business in such other state. Acts 1905, p. 113.

289. Foreign Companies—Investments.

Whenever any law of this state, now or hereafter enacted, regulates the admission of insurance companies of other states or countries to do business of any kind of insurance in this state and fixes the amount of capital or assets required of such insurance companies to do business in this state, then the amount of such capital or assets so required of such companies to do such business in this state shall be invested in the bonds of some one or more of the states of the United States or of the United States or in bonds of some one or more of the counties, cities or towns of this state or some other state of the United States which have not exceeded the limit of tax levies allowed by law, or some foreign country in which such company is authorized to do business, at the current market value thereof at the date of the admission of such company to do business in this state or in first mortgage bonds or mortgages on real estate worth double the amount for which the same is mortgaged and free from prior incumbrances. Acts 1905, p. 218.

290. Casualty, Surety, Health and Accident Companies—Admission to State—Assets—Agents—Requirements.

It shall not be lawful for any agent or agents of any casualty, surety or health company incorporated under the laws of any other state or any government foreign to the United States, directly or indirectly, to solicit insurance by any person or persons, firm, partnership or corporation, or to take any risks, or transact any business of insurance or suretyship in this state without first procuring a license from the auditor of state authorizing him, or them, to transact such business of insurance or suretyship as agent for such company in this state; and before such license shall be issued there shall be filed with the auditor of state a copy of the

act of incorporation of such company, if such copy has not already been filed, and a statement or blanks prepared by said auditor of state, under oath of two of the officers of the company making such statements, which statement shall show in detail the assets and liabilities of such company, and such other information as the auditor of state may require, and no accident and health or accident or health company shall transact any business of insurance in this state unless such company is possessed of at least one hundred thousand dollars invested in the stocks or bonds of some one or more of the states of the United States or of the United States or in bonds of some one or more of the counties, cities or towns of this state or some other state of the United States, at the current market value thereof at the date of admission of such company to do business in this state, or in first mortgage bonds or mortgages on real estate worth double the amount for which the same is mortgaged and free from any prior incumbrance. And no casualty company shall transact a general casualty business unless such company is possessed of at least two hundred thousand dollars invested in the stocks or bonds of some one or more of the states of the United States or of the United States, or in bonds of some one or more of the counties, cities or towns of this state, or some other state of the United States, at the current market value thereof at the date of admission of such company to do business in this state or in first mortgage bonds or mortgages on real estate worth double the amount for which the same is mortgaged and free from any prior incumbrance. And no surety company shall transact a surety business either singly or generally in connection with a casualty business unless such company is possessed of two hundred and fifty thousand [dollars] capital, and unless such capital to the extent of one hundred thousand dollars is invested in the stocks or bonds of some one or more of the states of the United States or of the United States, or in bonds of some one or more of the counties, cities, or towns of this state, or some other state of the United States, at the current market value thereof at the date of admission of such company to do business in this state, or in first mortgage bonds or mortgages on real estate worth double the amount for which the same is mortgaged and free from any prior incumbrance. And upon the filing of the foregoing statement and furnishing him with satisfactory evidence of such investment, and complying with the other laws of this state, concerning foreign insurance companies, or surety companies, it shall be the duty of the auditor of state to issue to

the agent or agents of the company applying for the same, a license to transact the business of insurance for such company in this state. Acts 1905, p. 454.

291. Certificate of Authority—Annual Statement—Filing Statement with Clerk of Circuit Court—Fee of Clerk—Publication of Statement—Fees of Auditor.

Annually during the month of January every insurance company incorporated by any other state than the state of Indiana or by any government, foreign to the United States, before doing business in Indiana shall file with the auditor of state of Indiana the statement now or hereafter required by law to be filed by such companies with such officers; upon the filing with and the approval by the said auditor of said statement as provided for by law it shall be the duty of said auditor to issue to each agent of any such company within the state a license to transact the business of insurance for such company within the state, and such license shall be renewed annually in the month of January: Provided, A similar license may be issued to any agent within the state applying therefor at any subsequent time during such calendar year, such license to be valid only during the remainder of such calendar year. It shall be the duty of such company to procure a certified copy of its financial statement required by law to be filed with such auditor and to file such copy together with such license annually in the office of the clerk of the circuit court in the county in which said agency is established, which license and copy of statement attached shall be filed by such clerk and preserved in his office, and for the filing thereof such clerk shall receive from such company the sum of twenty-five cents. Said copy of such license shall be conclusive evidence in any suit against any such company of the facts therein stated, including the authority of such agent named to act for such company, and the said auditor of state shall cause a copy of said statement so filed to be published twice in the two leading newspapers of the state having the largest general circulation therein; said publication to be made when the auditor of state may direct: Provided, That not more than one dollar per square shall be paid for each one of said publications, the expense thereof to be borne by the company. The auditor of state of Indiana shall charge and collect the sum of five dollars annually from each company for the examination of the said statement and investigation of the evidence of investments of such company, and three dollars for each license of

authority issued under the provisions of this act, including the seal of his office attached thereto together with such certified copy of such statement to be paid by the company or agent applying for the same: Provided, That the licenses issued at the time of the passage of this act shall be valid for the remainder of the year 1903 upon the payment to the auditor of state of the remaining (the) sum, if any, due for such license for the whole year. Acts 1903, p. 138.

This act repeals part of §4915, R. S. Ind. 1901. (Section 287 herein.)

This section does not repeal any part of retaliatory or reciprocal law. Opinion by Attorney-General Miller, 1903.

For annotation see under §287.

292. Fee for Examination of Statement.

The auditor of state shall charge and collect for the state of Indiana the sum of five dollars in each and every case for the examination of the statement and investigation of evidence of investment, and five dollars for each license of authority issued under the provisions of this act, including the seal of his office attached thereto, to be paid by the agent or agents applying for the same, and the auditor of state shall, on the first Tuesday in January and July of each year make to the treasurer of state a sworn statement of the number of statements filed in his office, and of the number of licenses issued under the provisions of this act and of the entire receipts therefor, since his last report, and shall pay over to the treasurer to go into the general fund of the state the entire amount of such receipts. R. S. 1901, §4915b.

293. Companies Foreign to United States—Conditions Precedent to Agents' License.

It shall be unlawful for any agent or agents, of any insurance company, incorporated by any government foreign to the United States, to transact any business of insurance in this state, without procuring a certificate of authority from the auditor of state; such agent or agents having first filed, in the office of said auditor, a statement, under the oath of the president, secretary, or secretary resident in the United States of such company, setting forth the charter or act of incorporation of the company, and the matters required to be specified by the first section (287 herein) of this act, and furnished evidence to the satisfaction of the auditor of state that such company has invested in the stocks or bonds of some one or more of the states of this Union or of the United States the sum of \$100,000, estimated at the current market value

thereof at the date of such statement, and that such stocks or bonds are held within the United States, by a citizen or citizens thereof, as the agent or agents, trustee or trustees of such company, and are not pledged or otherwise encumbered, but are held and remain for the protection and benefit of the policy-holders of such company; and the said agent or agents of such company, filing said statements, and furnishing evidences of investment as aforesaid, shall be entitled to a certificate of authority, in like manner as is provided for in the first section (287 herein) of this act. R. S. 1901, §4919.

This section applies to insurance companies incorporated by governments outside of the United States. *Daly v. National, etc., Co.*, 64 Ind. 1.

This section applies to Lloyds associations. Opinion by Attorney-General Smith, 1894.

294. Fees.

The auditor of state shall charge and collect for the state of Indiana the sum of \$5 in each and every case for the examination of the statement and investigation of evidence of investment, and \$2 for each certificate of authority issued under the provisions of this act, to be paid by the agent or agents applying for the same; and the auditor of state shall, on the first Tuesday in April, June, September and December of each year, make to the treasurer of state a sworn statement of the number of statements filed in his office, and of the number of certificates issued under the provisions of this act, and of the entire receipts therefor, since his last report, and shall pay over to the treasurer, to go into the general fund of the state the entire amount of such receipts, less twenty-five per cent. thereon, which he may retain for his service in collecting the same. R. S. 1901, §4920.

Fee collected under this section must be paid into the state treasury. *Burns' Supp.* 1897, §6422.

295. Duty of Agent to Retain Money.

Whenever any loss shall occur, of any property insured by any company authorized to take risks under this act, it shall be the duty of the agent by whom the insurance was made, to retain in his possession all moneys belonging to such company, which may then be or may thereafter come into his possession, until such loss is adjusted and paid: Provided, That if suit shall be commenced by the party insured, against such company, the agent may deposit in court double the amount mentioned in the policy, to abide the event of the suit; or if the party insured shall not commence

suit within ninety days after the agent shall have given written notice to such party that the loss will not be paid, the agent may thereafter [pay over] to persons entitled, the moneys of said company; and if any person insured by such company, meeting with a loss, shall notify any other agent of such company thereof, it shall be the duty of such agent to retain all moneys belonging to such company; which may then be, or may thereafter come into his possession, as hereinbefore required of the agent with whom the insurance was effected. R. S. 1901, §4921.

This section is constitutional. *Phenix, etc., Co. v. Burdett*, 112 Ind. 204.

296. Copies of Papers as Evidence.

The copies of all papers required by this act to be deposited in the office of the auditor of state, certified under the hand of such auditor to be true and correct copies of such papers, shall be received as evidence in all courts and places, in the same manner, and have the same force and effect, as the originals would have if produced. R. S. 1901, §4922.

297. Conditions in Policy Forbidden.

No such insurance company shall insert any condition, in any policy hereafter issued, requiring the insured to give notice forthwith, or within the period of time less than five days, of the loss of the insured property; nor shall any condition be inserted in such policy, requiring the insured to procure the certificate of the nearest justice of the peace, mayor, judge, clergyman, or other official or person, of such loss, or the amount of such loss; and any provision or condition contrary to the provisions of this section, or any condition in said policy inserted to avoid the provisions of this section, shall be void, and no condition or agreement not to sue for a period less than three years shall be valid. R. S. 1901, §4923.

Company can not require certificate of magistrate as to loss. *Aurora, etc., Co. v. Johnson*, 46 Ind. 315.

Condition in policy limiting time for bringing suit to less than three years is void. *Ins. Co. of N. A. v. Brim*, 111 Ind. 281.

Condition in policy requiring notice of loss "forthwith" is void, but the notice must be given within a reasonable time. *Pickel v. Phenix, etc., Co.*, 119 Ind. 291; *Ins. Co. of N. A. v. Brim*, 111 Ind. 281; *Germania, etc., Co. v. Deckard*, 3 Ind. App. 361; *Germania, etc., Co. v. Columbia, etc., Co.*, 11 Ind. App. 385.

298. Penalty.

Any person or persons violating the provisions of this act shall, upon conviction thereof, in any court of competent jurisdiction, be fined, in any sum not exceeding \$1,000, or imprisonment in the county jail not more than thirty days, or both, at the discretion of the court. Violations of the provisions of this act may be prosecuted by information filed by the prosecuting attorney of the proper county, or by indictment of the grand jury. R. S. 1901, §4924.

The supreme court of Indiana in *Hoffman v. Banks*, 41 Ind. 1, held that the above act is a substitute for the act of 1852, concerning foreign corporations, which the court in *The Rising Sun, etc., Co. v. Slaughter*, 20 Ind. 520, held applicable to foreign insurance companies. And in *The Farmers', etc., Co. v. Harrah*, 47 Ind. 236, the court held that the above law was also a substitute for the act of March 2, 1865, which is, therefore, omitted.

Notes taken for insurance by agents who are liable to prosecution under this section are void. *Cassaday v. American, etc., Co.*, 72 Ind. 95.

299. Auditor's Power and Duty as to Examination.

The auditor of state shall examine, or cause to be examined, by some competent and disinterested person, every detail of the business of any company transacting business of insurance in this state, whenever, in his judgment, such examination is required for the interest of the policy-holders of such company; and, for the purpose of such examination, has power, either in person or by one or more competent and disinterested examiners by him commissioned in writing:

First. To require free access to all books and papers, within this state, of any insurance company, or the agents thereof doing business within this state.

Second. To summons and examine any person, being within this state, under oath, which he or any examiner may administer, relative to the affairs and condition of any company.

Third. For probable cause, to visit at its principal office, wherever it may be, any insurance company doing business in this state, for the purpose of investigating its affairs and condition, and to revoke its authority to do business in this state, if it does not permit an examination.

Fourth. To revoke or modify any certificate of authority, when any condition prescribed by law for granting it no longer exists.

Fifth. The expense of all examinations, entries and publications, as in this section provided, to be paid by the company.

Sixth. The auditor of state shall also have power to institute suit and prosecutions, either by the attorney-general or such other attorneys as he may designate, for any violation of any of the provisions of this act.

Seventh. When such examination is made, such auditor is required to enter his report thereof in a book to be kept by him as such auditor for that purpose, and to cause a synopsis of said report (showing the assets and liabilities of such company), to be published in two of the leading daily newspapers of this state. R. S. 1901, §4925.

The fees collected by the auditor of state under this section may be retained by him for his services. *Henderson v. State*, 96 Ind. 437. But see: *Burns' Supp.* 1897, §6422.

300. Reciprocal Section.

When, by the laws of any other state, any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions are imposed upon insurance companies of this or other states, or their agents, greater than are required by the laws of this state, then the same obligations and prohibitions of whatever kind, shall, in like manner for like purposes, be imposed upon all insurance companies of such states and their agents. All insurance companies of other nations, under this section, shall be held as of the state where they have elected to make their deposit and establish their principal agency in the United States. R. S. 1901, §4926.

This section is constitutional. *State v. Insurance Co., etc.*, 115 Ind. 257; *Blackmer v. Royal, etc., Co.*, 115 Ind. 291; *People v. Fire, etc.*, 92 N. Y. 311. *Opinion Attorney-General Michener*, 1888.

Fees collected under this section must be paid into the state treasury. *Burns' Supp.* 1897, §6422.

Plate Glass Insurance Companies

301. Plate Glass Insurance—Regulations.

Any person or persons, or any co-partnership, company or corporation organized under the laws of any other state than this state, or any foreign country, and engaged in the business of insuring plate glass, shall be allowed and permitted to do and transact such business in this state when such company is possessed of at least \$100,000 of actual capital invested in the stock or bonds of some one or more of the states of this Union or of the United States, or the bonds of some one or more of the counties, cities or

towns of this state at the current value thereof, and when such company and its agents shall have fully complied with all the provisions and requirements of the laws of this state regulating foreign insurance companies, except so much thereof as requires a capital of \$200,000: Provided, That companies engaged in insuring plate glass and having less than \$200,000 capital invested as herein required shall not engage in or transact any other kind of business: Provided, That whenever it shall appear to the auditor of state that any such company, having \$100,000 capital shall have been directly or indirectly doing business in this state prior to the passage of this act, he shall not issue license to such company, or authorize it, to do business in this state, until it shall have paid all taxes, fees and penalties which should have been chargeable to it, had it, during such time, been authorized to do business in this state, and [not] violated any of the laws governing foreign insurance companies. R. S. 1901, §4927.

Service of Process on Foreign Companies.

302. Service of Process.

It shall not be lawful for any insurance company chartered, organized or incorporated in any other state or nation to do business in the state of Indiana until such company shall file with the auditor of state a certified copy of a vote or resolution of the board of directors of such company consenting that service of process in any suit against such company may be served upon any authorized agent of such company in the state of Indiana, with like effect as if such company was chartered, organized or incorporated in the state of Indiana, and agreeing that any process served upon such agent shall be of the same legal force and validity as if served upon said company, and agreeing that such service may be so made with such effect while any liability remains outstanding against such company in this state; and agreeing, further, that if at any time there shall be no authorized agent of such company in the county where any suit shall be brought service may thereafter be made upon the auditor of the state of Indiana with such effect as if made upon an authorized agent of such company. R. S. 1901, §4916.

Effect and extent of compliance with this section. *Gibbs v. Queen, etc., Co.*, 63 N. Y. 114; *Plimpton v. Bigelow*, 93 N. Y. 593; *Douglas v. Phoenix, etc., Co.*, 138 N. Y. 209; *National, etc., Co. v. Chambers (N. J.)*, 32 Atl. Rep. 663; *Johnston v. Trade, etc., Co.*, 132 Mass. 432; *Mutual, etc., Co. v. Nichols (Tex.)*, 24 S. W. Rep. 910; *Younmans v. Minnesota, etc., Co.*,

67 Fed. Rep. 282. "Doing business" in the state construed. *Sparks v. National, etc., Assn.*, 69 N. W. Rep. 678. Also, see *Mooney v. Buford, etc., Co.*, 18 C. C. A. 421; *Aetna Ins. Co. v. Commonwealth*, 45 L. R. A. 355.

When company fails to file such copy of a vote or resolution, service may be had on auditor of state. Opinion Attorney-General Hord, 1884.

See *McClure v. Supreme Lodge*, 59 N. Y. Supp. 764.

303. Suits Against Foreign Company—Jurisdiction—Process.

Every insurance company chartered, organized or incorporated in any other state or nation and now or hereafter doing business in the state of Indiana, shall be subject to the process of the courts of this state in any action, suit or other legal proceeding, relating to, or founded upon, any claim or demand of any character whatsoever, held or asserted against said company by any citizen of the state of Indiana; and process against said company shall be served in the manner provided by existing laws: Provided, That this act shall not affect pending litigation or claims or demands now incurred and existing. Acts 1901, p. 375. R. S. 1901, §4918a.

304. Service on Auditor of State by Duplicate.

Service of process in any action against any insurance company not having an agent in that county where any suit shall be brought, shall be made upon the auditor of state by duplicate copy, and such service shall be deemed in all respects the same as if such company was chartered, organized, or incorporated in the state of Indiana: Provided, however, That a writ against the auditor of state in such case shall not be returnable until thirty days after service. It shall be the duty of the auditor of state upon such service to promptly send one copy of such summons by registered letter to the president of such company, at the home office of the company, or if such company shall be chartered, organized, or incorporated in a foreign country, and shall have a principal office in the United States, the auditor shall send such copy to such principal office in the United States. The auditor shall file the other copy of summons in his office. See R. S. 1901, §4917.

Process can not be served under this section except in actions on policies or contracts of insurance. *Rehm v. German, etc., Inst.*, 125 Ind. 135.

Where a company does business in the state, service of process on the auditor will bind it, though it has not complied with the law. *Ehrman v. Teutonia, etc., Co.*, 9 Ins. L. J. 393; *Railroad Co. v. Harris*, 12 Wall. 81; *Diamond, etc., Co. v. Minneapolis, etc., Co.*, 55 Fed. Rep. 27; *Sparks v. National, etc., Assn. (Iowa)*, 69 N. W. Rep. 678; *Old Wayne Mut. Life Assn. v. McDonough (Ind.)*, 73 N. E. Rep. 703.

305. Auditor's Fees.

The auditor of state shall collect from any such company for filing the certified copy provided for in section 1 (302 herein), the sum of \$5, and shall collect from each company, upon service of process upon him, as provided in this act, the sum of \$3. See R. S. 1901, §4918.

These fees must be paid into the state treasury. Burns' Supp. 1897, §6422.

306. Taxation.

Every insurance company not organized under the laws of this state and doing business therein shall, in the months of January and July of each year, report to the auditor of state, under oath of the president and secretary, the gross amount of all receipts received in the state of Indiana on account of insurance premiums for the six months last preceding, ending on the last day of December and June of each year next preceding, and shall at the time of making such report pay into the treasury of the state the sum of \$3 on every \$100 of such receipts, less losses actually paid within the state, and any such insurance company failing or refusing for more than thirty days to render an accurate [account] of its premium receipts as above provided and pay the required tax thereon shall forfeit \$100 for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the state of Indiana on the relation of the auditor of state in any court of competent jurisdiction, and it shall be the duty of the auditor of state to revoke all authority of any such defaulting company to do business within this state. R. S. 1901, §8477.

This section is not in contravention of the constitutional requirement that the rule of taxation shall be uniform. *Fire Department v. Helfenstein*, 16 Wis. 136.

See *Fricke v. Travelers, etc., Co.*, 94 Wis. —; *State v. Fricke*, 77 N. W. Rep. 732; on rehearing, 78 N. W. Rep. 455.

Also, annotation to *State v. Ackerman*, 24 L. R. A. 298.

See opinion Attorney-General Taylor, 1899.

307. Ownership of Fees Collected by Auditor.

It shall be the duty of the secretary of the state and auditor of state to tax for the use of the state of Indiana, the fees, charges and taxes now allowed by law, or which may hereafter be allowed by law, for services in their respective offices, and said fees, charges and taxes shall be paid at the time such services are rendered, and such officers shall keep in a book to be kept for that

purpose an accurate account, showing all costs, fees, taxes and charges taxed and collected, including the charges and taxes provided by sections 3767 and 3773 of the Revised Statutes of 1881, from foreign insurance companies, which account shall show the person or corporation from whom collected and the date when collected; said fees, taxes and charges to be as now, or as may hereafter be fixed by law. On the first Monday in January and July of each year said officers shall make a sworn report to the treasurer of state, showing the amount of such collections, the date, and from whom collected, and the whole amount thereof shall be paid by such officers into the state treasury. And the auditor of state is required to collect the charges and taxes provided as aforesaid by sections 3767 and 3773 of the Revised Statutes of 1881, from foreign insurance companies, and pay the whole amount thereof due the state into the state treasury. R. S. 1901, §6422.

308. Acting as Agent for Unauthorized Company—Fraudulent Advertising.

Whoever represents or advertises himself by poster, circular letter or in any other manner, as the agent of any insurance company which is not possessed of the capital and assets required by the laws of this state, or which has not complied with such laws, shall, on conviction, be fined not less than ten dollars, nor more than one hundred dollars, to which shall be added imprisonment in the county jail not exceeding six months. Acts 1905, p. 472.

This section does not apply to professional adjusters coming into the state to adjust a loss. *French v. People* (Colo.), 40 Pac. Rep. 453.

309. Acting as Agent of Fictitious Company—Advertising Fictitious Company.

Whoever represents or advertises himself by poster, circular letter or in any other manner, as the agent of any fictitious or spurious insurance company which is not possessed of the capital and assets required by the laws of this state, shall, on conviction, be fined not less than ten dollars nor more than one hundred dollars, to which shall be added imprisonment in the county jail not exceeding six months. Acts 1905, p. 742.

CHAPTER XVIII.

FOREIGN SURETY COMPANIES.

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| §310. Admission. | §318. Capital required. |
| 311. Auditor of state to be attorney—Process. | 319. When agent may lawfully act. |
| 312. Duty of auditor. | 320. Auditor may require answers under oath. |
| 313. Amount of capital—Investment—Certificate. | 321. Time allowed for answer—Penalty. |
| 314. Agents of companies. | 322. Examination by auditor—Insolvency. |
| 315. Agent to deposit copy of charter. | 323. Violation of act—Report and proceedings. |
| 316. Statement filed with auditor—License. | 324. Fees required. |
| 317. Annual statement—Publication. | |

310. Admission.

Any surety company incorporated and organized under the laws of any state of the United States other than this state, or foreign country, for the purpose of transacting business as surety on obligations of persons or corporations, may transact such business in this state, upon complying with the provisions of this act and not otherwise. R. S. 1901, §5480.

311. Auditor of State to Be Attorney—Process.

No surety company not incorporated under the authority of this state shall, directly or indirectly, take risks or transact business in this state until it shall have first appointed, in writing, the auditor of state of this state to be the true and lawful attorney of such company in and for this state, upon whom all lawful process in any action or proceeding against the company, which said action or proceeding may be instituted in the county in which the plaintiff resides or has its principal office, if a corporation, may be served with the same effect as if the company existed in this state. Said power of attorney shall stipulate and agree, on the part of the company, that any lawful process against the company which is served on said attorney shall be of the same legal force and validity as if served on the company; and that the authority shall continue in force so long as any liability remains outstanding against the company in this state. A certificate of such appointment, duly certified and authenticated, shall be filed in the office of the auditor of state, and copies certified by him shall be re-

ceived in evidence in all the courts in this state. Service upon such attorney shall be deemed sufficient service upon the principal. R. S. 1901, §5481.

See annotations under §§296, 297.

312. Duty of Auditor.

Whenever lawful process against a surety company shall be served upon the auditor of state, he shall forthwith forward a copy of the process served on him by mail, postpaid, and directed to the secretary of the company. For each copy of process the auditor of state shall collect the sum of \$2, which shall be paid by the plaintiff at the time of such service, the same to be recovered by him as a part of the taxable costs, if he prevails in the suit. R. S. 1901, §5482.

313. Amount of Capital—Investment—Certificate.

No person shall act within the state as agent or otherwise in procuring or securing applications for suretyship upon the bond of any person or corporation, or aid in transacting the business of such suretyship for any company incorporated or organized under the laws of any other state, unless such company is possessed of \$250,000 capital, and unless such capital to the extent of \$100,000 is invested in stocks created by the laws of the United States or by or under the laws of the state or country in which such company is located, or in other safe stocks or securities, the value of which at the time of such deposit shall be at or above par, which investments are deposited with the insurance commissioner, auditor, controller or chief financial officer of the state or country under whose laws such company is incorporated, and the auditor of this state is furnished with the certificate of such insurance commissioner, auditor, controller or chief financial officer aforesaid, under his hand and official seal, that he, as such insurance commissioner, auditor, controller or chief financial officer of such state or country, holds in trust and on deposit for the benefit of all obligees of such company, the security before mentioned, which certificates shall embrace the items of security so held, and shall state that he is satisfied that such securities are worth \$100,000. R. S. 1901, §5483.

314. Agents of Companies.

Every person who shall so far represent any surety company established in any other state as to receive or transmit applications for suretyship, or receive for delivery bonds founded on ap-

plications forwarded from this state, or otherwise to procure suretyship to be effected by such company upon the bonds of persons or corporations in this state, or upon bonds given to persons or corporations in this state, shall be deemed as acting as agent for said company, and shall be subject to the restrictions and liable to the penalties herein made applicable to agents of such companies. R. S. 1901, §5484.

315. Agents to Deposit Copy of Charter.

Every such agent, before transacting any business as aforesaid, shall deposit with the auditor of state a copy of the charter or act of incorporation of the company or corporation for which he is agent as aforesaid, unless a copy thereof has already been deposited with such auditor. R. S. 1901, §5485.

316.—Statement Filed With Auditor—License.

Every such agent shall also, before transacting any business as aforesaid, procure a certificate of authority from the auditor of state, and before obtaining such certificate such agent shall furnish the auditor of state a statement, signed and sworn to by the president and secretary of the company for which he acts, stating the amount of its capital and the manner of its investments, designating the amount invested in mortgages, in public securities, in the stock of incorporated companies, stating what companies, and also the amount invested in other securities, particularizing each item of investment, the amount of existing bonds upon which such company is surety, stating what portion thereof is secured by the deposit with such company of collateral security, the amount of premium thereon, and the amount of liabilities, specifying therein the amount of outstanding claims adjusted or unadjusted, due or not due: Provided, however, That not more than one such statement need be filed on behalf of such company, and upon the filing of the aforesaid statement with the auditor of state and furnishing him with satisfactory evidence of such investment as aforesaid, it shall be the duty of said auditor to issue a certificate thereof with authority to transact the business of such company to the agent or agents applying for the same, said statement, evidence and certificate shall be renewed annually. R. S. 1901, §5486.

317. Annual Statement—Publication.

Every such company, or its agent, shall, in the month of January, annually, also deposit with the auditor of state a similar statement of the capital of the company which he represents, and the

investments and risks, as aforesaid, to be made up to the 31st day of December next preceding, signed and sworn to as above directed; and said auditor shall, annually, in the month of February, publish an abstract of the statement filed in his office, as required by section 9 [7] (283 herein) of this act and by this section, and the expense of publishing said abstract shall be paid by such companies: Provided, however, That not more than one such statement need be filed by such company in any one year. R. S. 1901, §5487.

318. Capital Required.

No person shall act as agent, as aforesaid, for any such surety company in this state, unless the capital stock of the company which he represents amounts to the sum of \$250,000, actually paid in in money, and invested exclusively of any obligations of the stockholders of any description. R. S. 1894, §5488.

319. When Agent May Lawfully Act.

It shall be unlawful for any person to act as agent of any such surety company until such company and such agent shall have complied with all the requirements of the laws of this state relating to such companies and their agents; and every person acting without such compliance shall, upon conviction thereof, be fined in any sum not exceeding \$1,000. R. S. 1901, §5489.

320. Auditor May Require Answers Under Oath.

The auditor of state shall annually examine the statements and returns required to be made by the companies and agents as aforesaid, and if, in his opinion, any return shall be obscure, defective or unsatisfactory, he shall immediately require answers under oath, from the agent by whom such obscure, defective or unsatisfactory return shall have been made, to such interrogatories as he may deem necessary or proper to be answered in order to explain such return, and exhibit a full and accurate view of the business and resources of the company represented by such agent. R. S. 1901, §5490.

321. Time Allowed for Answer—Penalty.

Every agent who shall refuse or neglect to answer such interrogatories for the space of thirty days, and continue to act as agent as aforesaid, shall be liable to the penalty prescribed in section 10 (286 herein) of this act. R. S. 1901, §5491.

322. Examination by Auditor—Insolvency.

The auditor of state, either personally or by a committee appointed by him, consisting of one or more persons not directors, officers or agents of any surety company doing business in this state, may at any time examine into the affairs of any surety company incorporated by or doing business in this state. The officers or agents of such company shall exhibit its books to said auditor or committee, and otherwise facilitate such examination, and the auditor or committee may examine under oath the officers and agents of any such company in relation to its affairs; and said auditor shall, if he deems it for the best so to do, publish the result of such investigation in one or more newspapers published in the state. Whenever it shall appear to the auditor from the statement or from an examination of the affairs of any surety company not incorporated under the authority of this state that such company is insolvent, or is conducting its business fraudulently, or refuses or neglects to comply with the laws of the state relating to surety companies, it shall be the duty of said auditor to revoke the certificate of authority issued to the agent or agents of any such company, and shall cause a notice thereof to be published in one or more newspapers published in the state, and the agent or agents of such company, after such notice, shall transact no further business in this state. All the expenses of an examination and publications made under the provisions of this section shall be paid to the auditor by the company examined. R. S. 1901, §5492.

323. Violation of Act—Report and Proceedings.

The auditor of state shall report to the attorney-general any violation of the provisions of this act which shall come to his knowledge, and the attorney-general shall institute the proper legal proceedings, in the name of the state, against any person violating any such provision. R. S. 1901, §5493.

324. Fees Required.

Every surety company not incorporated in this state applying for admission to transact business therein, shall pay to the auditor of state, for the use of the state for filing copy of its charter or act of incorporation the sum of \$5 for filing statement preliminary to admission, and for filing each annual statement after admission the sum of \$5, and for each agent's certificate annually the sum of \$2. R. S. 1901, §5494.

These fees must be paid by the auditor into the state treasury. Burns' Supp. 1897, §6422.

CHAPTER XIX.

ACCEPTANCE OF SURETY COMPANIES ON BONDS.

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| <p>§325. Bonds, surety companies executing.</p> <p>326. Qualifications—Capital — Investments—Deposits — Liabilities—What must file with auditor—Service of process.</p> <p>327. Certificates of authority.</p> <p>328. Annual report to auditor.</p> | <p>§329. Deposits by trustees or fiduciaries.</p> <p>330. Release of surety from bond.</p> <p>331. Payment for surety out of trust funds.</p> <p>332. Estoppel to deny corporate power.</p> <p>333. Laws repealed—Laws not repealed.</p> |
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325. Bonds—Surety Companies Executing.

Whenever any bond, undertaking, recognizance or other obligation is by any law of the state of Indiana, or the charter, ordinances, rules or regulations of any municipality, city government, common council, board of county commissioners, any savings bank, state bank or private bank, or any corporation, board, body, organization or public officer, required or permitted to be made, given, tendered or filed with surety or sureties, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a company qualified to act as such surety or guarantor, as hereinafter provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation now in force or which may hereafter be enacted, that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety, or by one or more sureties, or that such surety shall be residents or householders, or freeholders, or either or both, or possess any other qualification. R. S. 1901, §5496a.

326. Qualifications—Capital—Investment—Deposit — Liabilities —What Must File With Auditor—Service of Process.

That such company to be qualified to so act as surety or guarantor under this act, must be authorized under the laws of the state where incorporated, and its charter, to guarantee the fidelity of persons holding places of public or private trusts, and to guarantee the performance of contracts other than insurance policies,

and to execute bonds and undertakings required or permitted in actions or proceedings, or by law allowed; must comply with the requirements of laws of this state applicable to such company, in doing business therein; must have an unimpaired and safely invested capital of at least \$250,000, fully paid in, cash; must have at least \$100,000 invested in good dividend-paying or interest-bearing stocks or securities created under or by virtue of the laws of the United States, or the laws of the state where it is incorporated, or of good, solvent, dividend-paying corporations, which said stocks or securities shall be at or above par in value, and be deposited with or held by the insurance commissioner or superintendent, or other corresponding officer of the state where such company is incorporated, or such officer in some other state, in trust for the benefit of the holders of the obligations of such company; must have good available assets in excess of its liabilities, which said liabilities, however, shall, for the purpose of this act, be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per centum of the current annual premium on all outstanding risks in force; must also file with the auditor of state a certified copy of its charter or act of incorporation, a written application to be authorized to do business under this act, and a statement, signed and sworn to by two of its officers, stating the amount of its paid-up cash capital, particularizing each item of investment, the amount of premium on existing bonds upon which it is surety, the amount of liability for unearned portions thereof, estimated at the rate of fifty per centum of the annual premium on all outstanding obligations for one year or less, and pro rata for terms of more than one year; stating also the amount of its outstanding debts of all kinds, and such further statement similarly verified as may be by the laws of this state required of such company in transacting business therein; and if such company be incorporated under the laws of any other state than this state, it must appoint an attorney in this state on whom process of law can be served, and, in addition thereto, file with the auditor of state a written instrument, duly signed and sealed, certifying such appointment, which shall continue until another attorney be substituted. R. S. 1901, §5496b.

May become surety on official bonds of state and county officers. Opinion Attorney-General Taylor, 1898.

327. Certificates of Authority.

That upon production of proof to the auditor of state by such company that it possesses the qualifications by this act required,

and that it has complied therewith, he shall issue to such company, and to each of its agents in this state, his certificate that it is authorized for the ensuing year to become and be accepted as sole surety on all bonds, undertakings and obligations provided for in this act, which said certificate shall be prima facie proof of the solvency and credit of such company for all purposes, and of its right to be so accepted as such sole surety and its sufficiency as such. R. S. 1901, §5496c.

328. Annual Report to Auditor.

That such company shall also annually, in the month of January, file with the auditor of state its statement and proofs similar to that hereinbefore in section 3 (293 herein) of this act provided for, made to the 31st day of December next preceding, and shall also furnish him with a certificate from the officers with whom the deposits in section 2 (292 herein) of this act specified is required to be made, describing such securities so deposited and the manner in which they are held, and stating that such securities are fully worth \$100,000; and upon the filing of such statement and proofs, said auditor shall issue to such company and each of its agents in this state his certificate that such company is qualified and authorized for the ensuing year as in section 3 (293 herein) of this act provided, which certificate shall be proof as in said section specified. R. S. 1901, §5496d.

329. Deposits by Trustee or Fiduciaries.

That it shall be lawful for any receiver, assignee, guardian, trustee, committee, executor, administrator, curator or other fiduciary, or party to whom a bond, undertaking or other obligation is required, to agree and arrange with his surety or sureties, for the deposit for safe keeping, of any or all moneys, assets and other property for which he is or may be responsible, with a bank, savings bank, safe deposit or trust company authorized by law to do business as such, and in such manner as to prevent the withdrawal or alienation of such money, assets or other property, or any part thereof, without the written consent of such surety or sureties or an order of the court or a judge thereof made on such notice to such surety or sureties as the court or judge may direct. R. S. 1901, §5496e.

330. Release of Surety from Bond.

Such surety, or the representative of any such surety, upon the bond of any trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, may apply by petition

to the court wherein said bond is filed, or which may have jurisdiction of such trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, or to a judge of said court, praying to be relieved from further liability as such surety for the acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, which may occur after the date of the order relieving such surety, to be granted as herein provided for, and to require such trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, to show cause why he should not account and such surety be relieved from such further liability as aforesaid, and such principal be required to give a new bond; and thereupon, upon the filing of such petition, the court, in term time, or a judge thereof, in vacation, shall issue such order, returnable at such time and place, and to be served in such manner, as such court or judge may direct, or may restrain such trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, from acting, except in such manner as it may direct to preserve the trust estate; and upon the return of such order to show cause, if the principal in the bond account in due form of law and file a new bond duly approved, then such court or judge must make an order releasing such surety filing the petition as aforesaid from liability upon the bond for any subsequent act or default of the principal, and in default of such principal thus accounting and filing such new bond, such court or judge must make an order directing such trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary, to account in due form of law within ten days and that if a trust fund or estate shall be satisfactorily accounted for and delivered or properly secured, such surety shall be discharged from any and all further liability as such, for the subsequent acts or omissions of the trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary after the date of such surety being so relieved and discharged and revoking the appointment of or removing such trustee, committee, guardian, assignee, receiver, executor or administrator, or other fiduciary: Provided, That upon the discharge of any such surety from liability upon such bond, such surety shall refund and repay the pro rata unearned part of the premium paid for the execution of such bond.

R. S. 1901, §5496f.

331. Payment for Surety Out of Trust Funds.

Any receiver, assignee, guardian, committee, trustee, executor, administrator, or other fiduciary, required by law or the order of any court or judge to give a bond or obligation as such, may include, as a part of the lawful expense of executing his trust, such reasonable sum paid a company authorized under this act so to do, for becoming his surety on such bond or obligation, as may be allowed by the court in which he is required to account, or a judge thereof, not exceeding, however, one per centum per annum on the amount of such bond or obligation; and in all actions or proceedings the party entitled to recover costs may include therein and recover such reasonable sum as may have been paid such company by such party for executing or guaranteeing any bond, undertaking or obligation therein. R. S. 1901, §5496g.

332. Estoppel to Deny Corporate Power.

No company having signed any such bond, undertaking or obligation shall be permitted to deny its corporate power to execute such instrument or incur such liability in any proceeding to enforce liability against it thereunder. R. S. 1901, §5496h.

333. Laws Repealed—Laws not Repealed.

Chapter 101 of the laws of 1885, entitled "An act authorizing the acceptance of surety companies as sureties upon bonds required by the laws of this state, prescribing the rights and liabilities of such companies as sureties upon such bonds, and declaring an emergency," approved April 13, 1885, and all laws and parts of laws in conflict herewith are hereby repealed, except that this act shall not repeal, abrogate or alter the provisions of chapter 161 of the laws of 1893, entitled "An act to authorize the organization and incorporation of loan and trust and safe deposit companies, and defining their powers, rights and duties, and other matters connected therewith," approved March 4, 1893. Nor shall it repeal, abrogate or alter the provisions of an act, approved March 5, 1885, and entitled, "An act regulating foreign surety companies doing business in this state, prescribing the duties of the agents thereof, and of the auditor of state in connection therewith, providing penalties for the violation of this act and declaring an emergency." R. S. 1901, §5496i.

CHAPTER XX.

MUTUAL BURGLARY INSURANCE.

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| <p>§334. License of mutual companies.</p> <p>335. Condition upon which license shall be issued.</p> <p>336. Statement filed with auditor—License.</p> <p>337. Business limited—Reinsurance reserve.</p> | <p>§338. Liability of policy-holder—Payment of membership fee.</p> <p>339. Service of process.</p> <p>340. Renewal of statement—Fees—Penalty.</p> |
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[Act approved March 9, 1901. Acts 1901, pp. 333 to 336.]

334. License of Mutual Companies.

Section 1. Any insurance company organized and incorporated on the mutual plan under the laws of this state or of any other state of the United States, for the purpose of insuring against loss or damage resulting from burglary and robbery, or attempt thereat, and insuring against the loss of money and securities in course of transportation when shipped by registered mail, shall be admitted and licensed to do business in this state as hereinafter provided. R. S. 1901, §4931a.

335. Condition Upon Which License Shall be Issued.

Sec. 2. Before any such company shall be permitted and licensed to transact business in this state, it shall have in force five hundred or more policies on which the premium shall have been paid in cash or shall be evidenced by the written contracts of the policy-holders, on which not less than one-fifth of the amount shall have been paid in cash, and the cash and contracts for premiums shall amount in the aggregate to a sum of not less than fifty thousand dollars. The premium contracts so held shall constitute a part of the assets of the company. R. S. 1901, §4931b.

336. Statement Filed with Auditor—License.

Sec. 3. Every such company, association or partnership shall file in the office of auditor of state a certified copy of their charter or deed of settlement, together with a statement, under oath, of the president or vice-president, and secretary of the company, for which he or they may act, stating the name of the company and place where located, a detailed statement of its assets, showing the number of policy-holders, aggregate amount of premium contracts, the amount of cash on hand, in bank, or in hands of agents,

the amount of real estate, and how the same is incumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on each, and the estimated value of the whole amount of such securities; and other assets or property of the company, also stating the indebtedness of the company; the amount of losses adjusted and unpaid; the amount of losses incurred and in process of adjustment; the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; also a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any such company whose reinsurance reserve as required in this act is impaired, while such deficiency shall continue. Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this act, directly or indirectly, in taking risks or transacting the business of burglary and robbery insurance or the insuring of the safe shipping of money and securities by registered mail, in this state, without procuring from the auditor of state a certificate of authority, stating that such company has complied with all the requisitions of this act which apply to such companies. R. S. 1901, §4931c.

337. Business Limited—Reinsurance Reserve.

Sec. 4. Any company permitted and licensed to transact business in this state under this act shall confine its line of business to that stated in section 1 (334 herein) of this act. And shall confine its business in this state to banks, bankers, loan companies and county treasurers, and shall not issue any policy or policies to any persons, firms or corporations in this state other than banks, bankers, loan companies and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent. of its premiums, whether collected in cash or represented by obligation of the policy-holders, as written in its policies. R. S. 1901, §4931d.

338. Liability of Policy-Holder—Payment of Membership Fee.

Sec. 5. Policy-holders of any company permitted to transact business in this state under this act shall be held liable to pay the membership fee and premium on their insurance as paid or contracted to be paid at the time the policy is taken out, and shall not be held liable for any other or further assessments or claims

on the part of the company or its policy-holders. The membership fee and premium agreed upon may be collected in cash at the time policy is issued or evidenced by a written obligation of the policy-holder as may be agreed upon by the company and the policy-holder. Such payment or obligation shall be the limit of the liability of the policy-holder to the company for premium on their insurance. R. S. 1901, §4931e.

339. Service of Process.

Sec. 6. When any suit is brought against any company doing business in this state under the provisions of this act, process shall be served under the provisions of the act in that behalf, approved April 15, 1883; and such process, when so served, shall be sufficient for all purposes. R. S. 1901, §4931f.

340. Renewal of Statement—Fees—Penalty.

Sec. 7. The statement and evidences of membership assets and investments required by section three of this act shall be renewed from year to year, in such manner and form as may be required by said auditor of state, with an additional statement of the amount of premiums received in this state during the preceding year, so long as such agency continues, and the said auditor of state on being satisfied that the membership, assets, securities and investments remain secure, as hereinbefore mentioned, shall furnish a renewal of the certificate, as aforesaid, upon the payment to the state, at the time of filing the statement herein provided for, a fee of five dollars for each Indiana corporation and twenty-five dollars for each foreign corporation. Any violation of any of the provisions of this act shall subject the party violating the same to a penalty of not less than one hundred dollars or more than five hundred dollars. R. S. 1901, §4931g.

CHAPTER XXI.

TONTINE AND DEBENTURE BOND COMPANIES.

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| §341. License to do business. | §348. Soliciting business without license—Penalty. |
| 342. Filing statement with auditor—Certificate of authority. | 349. Tontine investment companies—Statement to auditor—License—Prohibited business. |
| 343. Deposit with auditor. | 350. Annual statement—Revocation of license. |
| 344. Revocation of authority—Receiver. | 351. Examination by auditor. |
| 345. Annual statement—Renewal of license. | 352. Acting without license—Penalty. |
| 346. Examination by auditor. | 353. Fees—Deposit. |
| 347. Fees. | |

[Acts March 11, 1901. Acts 1901, p. 487.]

341. License to Do Business.

Section 1. It shall be unlawful for any corporation, association or society organized under the laws of any state (other than the state of Indiana), or of any government foreign to the government of the United States to conduct or engage in the business of a trust or investment company for the purpose of issuing its stocks, bonds, contracts or agreements to its members, or other persons, upon which payments are to be made in installments, or for the purpose of receiving deposits or payments of money for any purpose without first procuring a certificate of authority from the auditor of state, which certificate shall be renewed annually. R. S. 1901, §5015d.

342. Filing Statement with Auditor—Certificate of Authority.

Sec. 2. Before the auditor of state issues such certificate to any such corporation, association of society, it shall file in his office a statement under the oath of its president and secretary showing the date of its incorporation, the names of its officers, the amount of its capital stock. It shall also furnish, under oath of its president and secretary, a statement showing the resources and liabilities and such other information concerning its business as the auditor of state may from time to time prescribe upon the filing of said statements and information aforesaid, and satisfying said auditor of state that it is solvent and doing a safe and legitimate business, then the said auditor of state may issue to such cor-

poration, association or society his certificate authorizing them to transact business in said state for the current calendar year. R. S. 1901, §5015e.

343. Deposit with Auditor.

Sec. 3. Every such corporation, association or society before the auditor of state shall issue his authority to do business shall deposit with said auditor of state, stocks or bonds, approved by said auditor in a sum, not less than \$25,000.00, which amount shall remain in possession of said auditor for and during the first year that said corporation, association or society shall do business. At the end of said first year said corporation, association or society shall deposit with said auditor of state stocks or bonds approved by said auditor equal to the amount of its liabilities to citizens of this state and shall keep such deposit at all times equal to such liabilities. R. S. 1901, §5015f.

344. Revocation of Authority—Receiver.

Sec. 4. Any time such corporation, association or society, shall fail to make such deposit, as required by section 3 (310 herein) or shall become insolvent or fail to carry out its contracts or agreements with citizens of this state, then said auditor of state, shall revoke its authority to do business in said state and shall ask the proper court of this state to appoint a receiver to take charge of such deposit for the benefit of its creditors in said state. R. S. 1901, §5015g.

345. Annual Statement—Renewal of License.

Sec. 5. Every such corporation, association or society shall, annually, in the month of January of each year, file with auditor of state, a full and complete statement in such form as may be prescribed by the auditor of state showing its condition of December 31st, of the previous year. If from an examination of said statement it shall appear that such corporation is solvent the auditor of state shall renew its license for the ensuing calendar year. R. S. 1901, §5015h.

346. Examination by Auditor.

Sec. 6. The auditor of state shall examine, or cause to be examined, under the provisions of this act, whenever in his judgment it may be necessary for the interests of the shareholders, stockholders or creditors of said foreign corporation, association or society residing in this state, every detail of the business of any said foreign corporation, association or society transacting busi-

ness in this state. Said examination shall be made at the expense of the foreign corporation, association or society examined; and consent to make such examination shall be filed before any certificate authorizing such foreign corporation, association or society shall be granted by said auditor of state. R. S. 1901, §5015i.

347. Fees.

Sec. 7. The auditor of state shall charge and collect from such foreign corporation, association or society, for filing the statements and other papers and issuing the certificates required to be filed and issued by this act, the same fees as are charged and collected from insurance companies, doing business in this state, and are chartered and incorporated under the laws of the state in which such foreign corporation, association or society is incorporated. R. S. 1901, §5015j.

348. Soliciting Business Without License—Penalty.

Sec. 8. Any person or persons, who, either directly or indirectly, shall solicit subscriptions to the capital stock of any such foreign corporation, association or society, or act as agent or officer of any such foreign corporation, association or society, or solicit any business of any nature for it without first procuring the certificate required in section 1 (341 herein) of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five hundred dollars (\$500) nor more than one thousand (\$1,000) to which may be added imprisonment in the county jail not exceeding thirty days. R. S. 1901, §5015k.

[Approved March 11, 1901. Acts 1901, p. 549.]

349. Tontine Investment Companies—Statement to Auditor—License—Prohibited Business.

Section 1. It shall be unlawful for any person, firm, joint stock company or corporation organized under the laws of any state, territory or the District of Columbia, other than the state of Indiana, or any government foreign to the government of the United States, to conduct or engage directly or indirectly, in the business of selling its stock, bonds, contracts, shares, membership or agreements of any kind, receiving therefor payments on the installment plan, without first procuring from the auditor of state a certificate of authority. Before such auditor shall issue such certificate of authority, the person, firm, joint stock company or corporation

shall file in his office a statement, under oath of its president and secretary, or one of the firm, if a firm, showing the name and location of such person, firm, joint stock company or corporation, the names of the officers of such firm, joint stock company or corporation, the date of incorporation thereof, if incorporated, and the amount of the assets and liabilities, and such other information concerning their respective plans of doing business as shall be prescribed by said auditor of state. If it shall appear from said statement that said person, firm, joint stock company or corporation is doing a safe and legitimate business, and that it is in a solvent condition, then said auditor may issue his certificate authorizing said person, firm, joint stock company or corporation to transact business in this state for the then current calendar year: Provided, If it appear from the statements and plans of business of said person, firm, joint stock company or corporation that it permits forfeitures of payment by members, or persons holding its stocks, bonds, contracts or agreements, or provides for the payment of its expenses other than from earnings, or provides for the payment to any member, share holder, certificate holder or bond holders, or to any class of members, share holders, certificate holders or bond holders, or any profit, advantage or compensation, of any form or description other than that received by all other members, share, certificate or bond holders of the same class, and under like conditions and the investment of a like amount of money; or, if beneficiaries are determined, selected or advantage given to one over the other by any form of lottery, chance or hazard, then such firm, joint stock company or corporation shall not be authorized to transact business in this state; and if any such firm, joint stock company or corporation engages in any such business, it shall immediately cease doing business in the state. R. S. 1901, §5015 l.

350. Annual Statement—Revocation of License.

- Sec. 2. Annually thereafter, during the month of January in each year, every such firm, joint stock company or corporation shall file with the auditor of state a statement showing its condition on December 31, of the previous year. Such statement shall be in the form prescribed by the auditor of state. If it appears from such statement that such person, firm, joint stock company or corporation is still doing a safe business and is solvent, then said auditor may issue his certificate authorizing it to transact business in said state until December 31 of said year. If, at any time, it shall appear that such person, firm, joint stock company or corpo-

ration is doing an unsafe business, or is insolvent, said auditor of state may revoke said certificate of authority. R. S. 1901, §5015m.

351. Examination by Auditor.

Sec. 3. Said firm, joint stock company or corporation shall, at all times, be subject to examination by the auditor of state, or some person appointed by him. Said examination shall be at the expense of said firm, joint stock company or corporation, and refusal to permit said examination shall be cause for revocation of its authority to do business in the state. R. S. 1901, §5015n.

352. Acting Without License—Penalty.

Sec. 4. Any person who shall act as agent for such person, firm, joint stock company or corporation, or solicit business of any nature for it before it shall be authorized to do business in said state, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than fifty dollars nor more than five hundred dollars; to which may be added imprisonment in the county jail not exceeding thirty days. R. S. 1901, §5015o.

353. Fees—Deposit.

Sec. 5. Every such person, firm, joint stock company or corporation shall pay to the state for license fee for a certificate of authority to do business in the state, as herein provided, the sum of one hundred dollars annually, and a further license fee of five dollars for each agent; and every such person, company, firm or corporation, prior to the receipt of its certificate of authority, shall deposit with the auditor of state the sum of fifty thousand dollars in securities of the same character as those required to be deposited by foreign life insurance companies. R. S. 1901, §5015p.

CHAPTER XXII.

FIRE PATROL.

Establishment and Maintenance of the Fire Patrol.

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| §354. Fire patrol. | §357. When statement may be de- |
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354. Fire Patrol.

Boards of underwriters, incorporated by or under the laws of the state of Indiana, shall have power to provide suitable rooms for the accommodation of a fire patrol, and also to provide a patrol of men, and a competent person to act as superintendent to discover and prevent fires, with suitable apparatus to save and preserve property or life at and after a fire, and the better to enable them so to act with promptness and efficiency, full power is given such superintendent, and such patrol, to enter any building on fire, or which may be exposed to or in danger of taking fire from other burning buildings, subject to the control of the chief fire engineer of the city, and at once to proceed to protect and endeavor to save the property therein, and to remove such property, or any part thereof, from the ruins after a fire. R. S. 1901, §4959.

355. Annual Meeting of Underwriters.

In the month of May of each and every year, there shall be held a meeting of said board of underwriters, of which ten days' previous notice shall be inserted in at least one daily newspaper published in the city where said board of underwriters is located, at which meeting each insurance company, corporation, association, underwriter, agent, person or persons, doing a fire insurance business in the city, shall have the right to be represented at such meeting, and shall be entitled to one vote. A majority of the whole number so represented shall have power to decide upon the question of sustaining the fire patrol hereinbefore mentioned, and of fixing the maximum amount of expenses which shall be incurred therefor during the fiscal year next to ensue, which amount shall in no case exceed two per centum on the aggregate of premiums returned as received, as provided in section 3 (324 herein) of this act; and the whole of such amount, or so much thereof as may be

necessary, may be assessed upon all insurance companies, organizations, corporations, associations, and persons who assume risks, and accept premium for fire insurance in said city, as hereinbefore mentioned, in proportion to the several amounts of premiums returned as received by each, as hereinafter provided; and such assessment shall be collectible by and in the name of said board of underwriters, in any court of law in the state of Indiana having jurisdiction, in such manner, and at such time or times as said board of underwriters may determine. R. S. 1901, §4960.

356. Board May Require Statement from Companies.

To provide for the payment of persons employed under the provisions of this act, and to maintain suitable rooms and the apparatus for saving life and property contemplated, said board of underwriters is empowered to require a statement to be furnished semi-annually by all insurance companies, corporations, associations, underwriters, agents or persons, of the aggregate amount of premiums received for insuring property in the city where said board of underwriters is organized or established, for and during the six months next preceding the first day of July, and the first day of January of each year; which statement shall be sworn to by the president or secretary of the corporation or association, or by the agent or person so acting, and effecting such insurance in said city, and shall be handed to the secretary of said board of underwriters within such time as hereinafter provided in section 4 (357 herein) of this act. R. S. 1901, §4961.

357. When Statement May be Demanded—Forfeiture for Neglect to Furnish.

It shall be lawful for the secretary or other appointed officer of said board of underwriters, within ten days after the first day of July and the first day of January in each year, by written or printed demand, signed by him, to require from every insurance company, corporation, association, underwriter, agent, or person engaged in the business of fire insurance in the city where said board of underwriters is organized or established, the statement provided for in the last preceding section of this act; such demand may be delivered personally at the office of such insurance company, corporation, association, underwriter, agent, or person; and every officer of such insurance company, corporation or association, and every individual agent, underwriter, or person, who shall, for fifteen days after such demand, neglect to render the account, shall forfeit \$50 for the use of said board of underwriters,

and he shall also forfeit for its use \$25 in addition for every day he shall so neglect, after the expiration of the said fifteen days; and such additional penalty may be computed and recovered up to the time of trial of any suit for the recovery thereof, which penalty may be sued for and recovered, with costs of suit, in any court of law within the state of Indiana having jurisdiction, by and in the name of said board of underwriters. R. S. 1901, §4962.

CHAPTER XXIII.

FOREIGN CORPORATIONS GENERALLY.

Provisions Relating to Foreign Corporations Generally and Applicable to Foreign Insurance Companies.

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| <p>§358. "Agent" defined.
 359. Who not included.
 360. Penalty on agent.</p> | <p>§361. Removal of suits to United States court — Commencement of suit in United States court—Forfeiture.
 362. Conditions precedent.</p> |
|---|--|

358. "Agent" Defined.

Any person who shall, directly, or indirectly, receive or transmit money or other valuable thing to or for the use of such corporations, or who shall in any manner make, or cause to be made, any contract, or transact any business for or on account of any such foreign corporation, shall be deemed an agent of such corporation, and be subject to the provisions of this act relating to agents of foreign corporations. R. S. 1901, §3457.

United Firemen's, etc., v. Thomas, 34 C. C. A. 240; John Hancock, etc., v. Schlink, 175 Ill. 284.

359. Who Not Included.

The foregoing section shall not apply to persons acting as agents for foreign corporations for a special or temporary purpose or for purposes not within the ordinary business of such corporations, nor shall it apply to attorneys at law, as such. R. S. 1901, §3458.

360. Penalty on Agent.

Any person acting as agent of a foreign corporation as aforesaid, neglecting or refusing to comply with the foregoing provisions as to agents, shall, upon presentment or indictment, be fined in any sum not less than \$50. R. S. 1901, §3459.

Applicable to agents of District of Columbia insurance companies. State v. Briggs, 116 Ind. 55.

361. Removal of Suits to United States Court—Commencement of Suit in United States Court—Forfeiture.

Every foreign corporation now doing or transacting, or that shall hereafter do or transact, any business in this state, or acquire any right, title, interest in, or lien upon real estate in this state, that shall transfer or cause to be transferred from any court of this state to any court of the United States, save by regular course of appeal, after trial in the state courts; any action commenced by or against such corporation in any court of this state by or against any citizen or resident thereof; or shall commence in any court of the United States in this state, or any contract made in this state or liability accrued therein, any suit or action against any citizen or resident of the state of Indiana—shall thereby forfeit all right and authority to do or transact business in this state or hold real property or liens thereon; and all contracts between such corporations and citizens or residents of this state, made after the passage of act, shall be rendered void as in favor of such corporation, but enforceable by such citizen at his election. R. S. 1901, §3460.

This section is valid. *Morse v. Home, etc., Co.*, 30 Wis. 496; *State v. Doyle*, 40 Wis. 715. Held unconstitutional and void on appeal to U. S. supreme court. *Home, etc., Co. v. Morse*, 87 U. S. 445; *Doyle v. Continental, etc., Co.*, 94 U. S. 535. An injunction to restrain the revocation of license because of removal of a cause to the United States court can not be sustained. *Doyle v. Continental, etc., Co.*, 94 U. S. 535. On violation of this act the revocation of license is imperative. *State v. Doyle*, 40 Wis. 220. Agent can not be proceeded against for representing company which has not agreed to provision against removal. *Barron v. Burnside*, 121 U. S. 186.

362. Conditions Precedent.

The provisions of this act are hereby made conditions upon which such corporations may be authorized to do business in this state or hold titles to or liens on real estate therein. R. S. 1901, §3461.

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